



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

---

सोमवार, 07 सितम्बर, 2020 / 16 भाद्रपद, 1942

---

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

*Dharamshala, the 14th October, 2019*

**No. Shram(A) 6-2/2014 (Awards).**—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court

Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	823/16	Baso Ram	E. E. HPPWD, Nurpur.	01-08-2019
2.	348/15	Lok Pal	D. F. O. Suket	02-08-2019
3.	169/17	Reeta Devi	D. F. O. Joginder Nagar	02-08-2019
4.	174/17	Gian Chand	D. F. O. Joginder Nagar	02-08-2019
5.	12/17	Prakash Chand	E. E. HPPWD, Nurpur & other	05-08-2019
6.	808/16	Thurudeen	E. E. HPPWD, Nurpur	05-08-2019
7.	246/16	Karam Chand	E. E. HPPWD, Bharmour	08-08-2019
8.	36/18	Noor Mohammad	G. M. Sahoo Hydro	08-08-2019
9.	427/16	Shanti	E. E. HPPWD, Killar	08-08-2019
10.	541/16	Dev Raj	-do-	08-08-2019
11.	599/15	Surjeet	-do-	08-08-2019
12.	165/16	Chatri	-do-	08-08-2019
13.	537/16	Roshan Lal	-do-	08-08-2019
14.	545/16	Rusli	-do-	08-08-2019
15.	131/16	Guddi Devi	-do-	08-08-2019
16.	19/16	Naini Devi	-do-	08-08-2019
17.	66/17	Devi Saran	-do-	08-08-2019
18.	429/16	Gamo Devi	-do-	08-08-2019
19.	79/16	Dev Dei	-do-	08-08-2019
20.	341/16	Nanak Singh	-do-	08-08-2019
21.	595/15	Parkash Chand	-do-	08-08-2019
22.	458/16	Bhutti Devi	-do-	08-08-2019
23.	442/15	Kaka Ram	-do-	08-08-2019
24.	313/16	Sohan Lal	E. E. I&PH Sunder Nagar	13-08-2019
25.	252/16	Ganga Ram	-do-	13-08-2019
26.	191/16	Kundan Lal	-do-	13-08-2019
27.	250/16	Pushp Raj	-do-	14-08-2019
28.	190/16	Devi Chand	-do-	14-08-2019
29.	251/16	Lajja Ram	-do-	14-08-2019
30.	138/17	Sujan Singh	G.M. M/s Industrial Engineering Corp.	16-08-2019
31.	679/16	Baldev	E. E. HPPWD Shimla & others	16-08-2019
32.	158/17	Sukh Ram	E. E. HPPWD Shimla & others	17-08-2019
33.	157/17	Pawan Kumar	E. E. HPPWD Shimla & others	19-08-2019

34.	55/13	Jeewan Kumar	M/s Him Cylinder Ltd.	26-08-2019
35.	439/15	Sanjiv Vajir	E. E. HPPWD, Baijnath	29-08-2019
36.	830/16	Tilak Raj	E. E. HPPWD, Nurpur & others	30-08-2019
37.	890/16	Tulsi Ram	-do-	30-08-2019
38.	791/16	Som Lal	-do-	05-08-2019
39.	782/16	Karnail Singh	-do-	05-08-2019
40.	775/16	Chowkas Ram	-do-	05-08-2019
41.	781/16	Karam Chand	-do-	05-08-2019
42.	784/16	Pappu Singh	-do-	05-08-2019
43.	483/16	Desh Raj	-do-	08-08-2019

By order,

NISHA SINGH, IAS

*Addl. Chief Secretary (Lab. & Emp.).*

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 823/2016

Date of Institution : 24.11.2016

Date of Decision : 01.08.2019

Shri Baso Ram s/o Shri Bhagat Ram, r/o Village Nagni, P.O. Bhadwar, Tehsil Nurpur,  
District Kangra, H.P. *. .Petitioner.*

*Versus*

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Jawali, Tehsil Nurpur, District Kangra, H.P. *. .Respondents.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Nemo

For the Respondents : Sh. Sanjeev Kumar Lakha, ADA

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the alleged termination of services of Shri Baso Ram s/o Shri Bhagat Ram, r/o Village Nagni, P.O. Bhadwar, Tehsil Nurpur District Kangra, H.P. during year 1990 by (i) the Executive Engineer, Nurpur Division, HPPWD, Nurpur, District Kangra, H.P. (ii) the Executive Engineer, Jawali Division, HPPWD, Jawali, District Kangra, H.P., who had worked on daily wages basis as beldar and has raised his industrial dispute after about 22 years *vide* demand notice dated nil received in the office of Labour Officer Kangra at Dharamshala on 04-03-2013 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of about 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis during the year 1986 in HPPWD Sub Divisions-I and II, Nurpur and had worked as such upto the year 1990. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para No. 3 of the petition. The mates of the petitioner were S/Shri Prem Chand, Bishamber Singh and Tarveez Singh. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent no.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25.5.2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his reengagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections, regarding lack of maintainability and that the petition was bad on the grounds of delay and laches. On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* HP Government Notification no. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1986 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondents so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondents, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondents. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon’ble High Court only then the demand notice was issued by the petitioner in the year 2011, i.e. after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. No rejoinder has been filed by the petitioner.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 4.8.2018:

1. Whether termination of the service of the petitioner by the respondents during year, 1990 is/was legal and justified as alleged? . .*OPP*.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR*.
4. Whether the claim petition is bad on the ground of delay and laches as alleged? . .*OPR*.

Relief.

6. Arguments of the learned Assistant District Attorney for the respondents heard and records gone through.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2 : Negative

Issue No. 3 : Not pressed

Issue No. 4 : No

Relief : Claim petition is dismissed as per the operative portion of the Award.

**Issues No.1 To 2 :**

### **REASONS FOR FINDINGS**

8. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

9. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondents in the year 1990 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis in the year 1986. It was also his claim that he had completed 240 days in each calendar year. A plea was also taken to the effect that the respondents had not adhered to the principle of 'last come first go', as persons junior to the petitioner were retained and that fresh hands had also been engaged. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

10. However, when the case was listed for evidence of the petitioner for 31.7.2019, neither he nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

11. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity sake). Section 2 (b) of the Act defines the Award as under:-

*“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.*

12. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

*“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”*

13. Rule 22 reads thus:—

*“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”*

14. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

*“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”*

15. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, they are unwilling to adduce evidence or argue their case.

16. In the instant case, neither the petitioner nor his counsel had put in appearance before this Tribunal on 31.7.2019. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

17. Since, it is disputed by the respondents that the services of the petitioner had been engaged on daily wage basis, so firstly it was required of the petitioner to prove on record that he had been engaged by the department on daily waged basis and then to establish on record, as per the reference, that the termination of his services in the year 1990 by the respondents was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but his allegations therein have remained a mere saying on record, as no evidence in support thereof has been led by him. At the risk of repetition, the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief, as claimed for in the statement of claim. Hence, both these issues are decided against the petitioner and in favour of the respondents.

**Issue No. 3 :**

18. Not pressed.

**Issue No. 4 :**

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82*, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondents.

**Relief :**

21. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 348/2015

Date of Institution: 05.8.2015

Date of Decision: 02.08.2019

Shri Lok Pal s/o Shri Hari Pal, r/o Village Brokhari, P.O. Jhungi, Sunder Nagar, District Mandi, H.P. . *Petitioner.*

*Versus*

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . *Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.  
For the Respondent(s) : Smt. Navina Rahi, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Lok Pal s/o Shri Hari Pal, r/o Village Brokhari, P.O. Jhungi, Sunder Nagar, District Mandi, H.P. during January, 2010 to April, 2011 and finally during May, 2011 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged as a daily waged beldar by the respondent in January, 2010 and had worked till the month of April, 2011. His services were illegally terminated by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) and the rules made thereunder. The petitioner had worked to the satisfaction of the respondent. He had never left the work. Fictional breaks were given to him from time to time by the respondent, despite there being sufficiency of work and funds. Juniors to him were retained and new/fresh hands had been engaged by the respondent after his termination. The respondent had violated the principle of ‘first come last go’. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and locus standi. The contents of the petition were denied on merits. It is asserted that the petitioner had worked with the respondent/department on bill basis for some months on fire protection duty and other seasonal works. He had worked in Jhungi Forest Range, Suket Forest Division during the year 2010 and 2011. After May, 2011 the petitioner had left the work of his own sweet will. The question of giving fictional breaks did not



arise, the petitioner had worked with the respondent/department on bill basis. No junior had been engaged by the respondent and no fictional breaks were given to the petitioner. The respondent had never terminated/interrupted or ceased the services of the petitioner. There has been no violation of the provisions of the Act by the respondent. The principle of 'first come last go' has not been violated. The respondent, thus, prays for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 20.12.2017:

1. Whether time to time termination of services of the petitioner by the respondent during January, 2010 to April, 2011 is/was illegal and unjustified as alleged? ..*OPP*.
2. Whether final termination of services of the petitioner during May, 2011 is/was improper and unjustified? ..*OPP*.
3. If issue No.1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged?. ..*OPR*.
5. Whether the petitioner has no locus standi to file the present claim as alleged?. ..*OPR*.

Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Lok Pal examined himself as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A. He through his learned counsel tendered in evidence copy of judgment dated 5.11.2014 as Ex.P1, copies of letters dated 21.5.2015 and 1.5.2017 as Ex.P2 and Ex.P3 respectively. The respondent examined one Shri Suneet Bhardwaj as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of mandays chart of the petitioner as Ex. RW1/B.

7. Arguments of the learned Counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Negative

Issue No. 2 : Negative

Issue No. 3 : Negative

Issue No. 4 : Yes

Issue No. 5 : Yes

Relief : Petition is dismissed as per operative part of the Award.

### REASONS FOR FINDINGS

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Lok Pal (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that there is seasonal work in the department. He was engaged as a daily waged worker in the year 2010. He specifically denied that he had been engaged in the year 2010 on bill basis for seasonal work/fire protection duty intermittently. Volunteered that, he had worked continuously. He admitted that he had not given in writing to the department from the year 2011 upto the year 2013 for his re-engagement. Self stated that he had been going to the department for providing work. Further, he admitted he had given the demand notice in the year 2013. He specifically denied that no breaks were given to him by the department and that he had never been kept on muster roll basis. He also denied that he had never been disengaged by the respondent. Further, he denied that after April, 2011 he himself had abandoned the work. He owns land, which he cultivates. He feigned ignorance that only those workers had been regularized by the department who had worked continuously and had fulfilled the conditions of the policies of the government for regularization. He denied that no juniors had been retained and that he had given a phoney statement.

11. Ex. P1 is the copy of judgment passed by the Hon'ble High Court in Civil Writ Petition No.8140 of 2014.

12. Ex. P2 is the copy of letter dated 21.5.2015 addressed by Principal Chief Conservator of Forests, Himachal Pradesh to Additional Chief Secretary Forests, to the Government of Himachal Pradesh.

13. Ex. P3 is the copy of letter dated 1.5.2017 addressed by Range Officer, Jhungi to Divisional Forest Officer, Suket.

14. Ex.PR1 is the copy of notification dated 28th April, 2009.

15. Ex. PR-2 is the copy of seniority list of daily labourer of Suket Forest Division as on 30.11.2011.

16. Conversely, Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner had been working on bill basis. He also admitted that the mandays chart Ex. RW1/B neither bears any bill number nor the work order. Notification Ex. PR-1 relates to the department. Seniority list Ex. PR-2 also relates to his Division. He admitted that no notice had been given to the petitioner for remaining absent from duty. Volunteered that, he himself had abandoned the work. He denied that the petitioner had been

engaged in the year 2006. Further, he denied that the seniority list has been manipulated. He also denied that even today juniors to the petitioner have been retained by the department.

17. Ex. RW1/B is the copy of mandays chart pertaining to the petitioner.

18. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent/department. It was claimed by the petitioner that he had been engaged as a daily wager, whereas the stand taken by the respondent is that he had worked in the department on bill basis. No bill vouchers have been proved on record by the respondent. Rather, as per the mandays chart, Ex. RW1/B placed on record by the respondent, the petitioner is shown to have worked with the respondent as a daily wager. Though, the petitioner claimed that he had worked from the month of January, 2010 to April, 2011, but he has not placed and exhibited on the file any document evidencing that he had continuously worked under the respondent during the aforesaid period. Looking to the mandays chart, it can be gathered that the services of the petitioner had initially been engaged by the respondent in January, 2010 and that he worked with the respondent/department intermittently upto May, 2011.

19. Firstly, I proceed to decided as to whether fictional breaks in service were given to the petitioner by the respondent during January, 2010 to April, 2011 (as mentioned in the reference) or not?

20. To my mind, the answer to this query is in the negative. The mandays chart Ex. RW1/B clarifies that in the years 2010 and 2011, the petitioner had just worked for 101 days and 45 days in both these years. No explanation is forthcoming on behalf of the petitioner as to why he had served for just 101 days in the year 2010 and for less than 50 days in the year 2011. The petitioner (PW1) in his cross-examination admitted that he had not given in writing to the respondent from the year 2011 upto the year 2013 to re-engage him. The mandays chart Ex. RW1/B highlights that from the year of his initial engagement to the year 2011, the petitioner did not complete 240 days of work in any calendar year of his employment. The respondent has categorically pleaded and stated that the petitioner was an intermittent worker, who used to work as per his convenience and sweet will. Taking into account the working pattern of the petitioner, by no stretch of imagination it can be said that artificial breaks in service were provided to him by the respondent, as alleged.

21. Now comes the question as to whether in the month of May, 2011, the services of the petitioner were finally terminated by the respondent or not?

22. As per the reference received from the appropriate Government, the services of the petitioner stood finally terminated during May, 2011. Section 10 (4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding the alleged final termination of the services of the petitioner by the respondent in the month of April, 2011. However, looking to the statement of claim and the sworn testimony of the petitioner, it is apparent that he has claimed that his services had been finally terminated by the respondent in the month of April, 2011. Such pleadings and evidence of the petitioner cannot be looked into by this Court, being beyond the terms of the reference. Then, as per the mandays chart Ex. RW1/B, which is not in dispute, the petitioner is shown to have worked for a period of 30 days in the month of May, 2011. Since, it has not been pleaded nor stated by the petitioner that his services stood terminated by the respondent in the month of May, 2011, therefore, the question of final termination of his services by the respondent (as per the reference) does not arise. Rather, the same has become insignificant.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner and that his services were not finally terminated by the respondent during May, 2011. He is not entitled to any relief.

24. These issues are answered in the negative and are decided against the petitioner.

**Issues No. 4 and 5 :**

25. Taking into account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue and that the instant claim petition is not maintainable in the present form.

26. These issues are answered in the affirmative and in favour of the respondent.

**Relief :**

27. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
*Presiding Judge,*  
*Labour Court-cum-Industrial,*  
*Tribunal, Kangra at Dharamshala, H.P.*

---

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 169/2017  
Date of Institution : 08.8.2017  
Date of Decision : 02.08.2019

Smt. Reeta Devi alias Kamla Devi w/o Shri Ramesh Chand, r/o Village and Post Office Tanihar, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

*Versus*

The Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P. . *Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. S.K. Lakha, A.D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Smt. Reeta Devi alias Kamla Devi w/o Shri Ramesh Chand, r/o Village and Post Office Tanihar, Tehsil Sarkaghat, District Mandi, H.P. from time to time during year, 2011 to 2013 and finally terminated during August, 2013 by the Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner, as set out in the statement of claim is that her services were engaged by the respondent on daily waged basis in the year 2002. She had worked under the supervision of Forest Range Officer, Kamlah upto the year 2013. The latter used to disengage her services without any written order so that she could not complete more than 240 days during the aforesaid period for the purposes of the provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). The services of the petitioner had been finally terminated by the respondent in the year 2013. Fictional breaks were given by the respondent from the year 2002 upto the year 2013. It is also asserted that while terminating the services of the petitioner in the year 2015, the respondent had not followed the principle of ‘last come first go’, as persons junior to her, namely, S/Smt./Shri Shyam Singh, Sheela Devi, Sunil Kumar, Rani Devi, Prem Singh and Kashmir Singh were retained in service without any breaks and all these workers are still working with the respondent/department. No muster roll, casual card and wages slip had ever been provided to the petitioner by the respondent. She had raised a demand notice on 26.8.2015 against the respondent. Its copy stood forwarded to the Labour-Inspector-cum-Conciliation Officer, Joginder Nagar. Demand notice was responded to by the respondent, wherein it was denied that the petitioner was engaged in the year 2002 and had worked upto the year 2012. It was claimed that she had been engaged in the year 2011 and that she had worked as such upto the year 2013 on bill voucher basis. At the time of termination of services of the petitioner, she had completed more than 240 days. The act and conduct of the respondent is highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objection that no legal and fundamental right of the petitioner has been infringed by the respondent, so the petition was not maintainable. The contents of the petition were denied on merits. It is asserted that during the months of January, 2011 and July, 2013 she had hired the work from the respondent/department on bill basis and had received the payments for the execution of various works. It was denied that she had been engaged in the year 2002. Despite the availability of the seasonal works, the petitioner used to absent herself from duties. No fictional breaks had ever been given to her. She had not completed 240 days in the preceding twelve calendar months to fulfill the conditions of Section 25-B of the Act. So, there is no violation of Section 25-F of the Act. Work is provided to the seasonal/casual workers as per its availability and funds. The respondent had followed the principle of ‘last come first go’ strictly and no fresh hands had been engaged. It is averred that the claim of the petitioner regarding final termination in the year 2013 was wrong, as she had been working on bill basis for execution of seasonal works. The petitioner was an intermittent work and had absented herself during the course of her engagement and she

used to report for duty as per her own convenience and sweet will. The services of Shri Shyam Singh were engaged as a contingent paid worker under died in harness policy after the death of his father. Smt. Sheela Devi was engaged as a part-time worker *w.e.f.* July, 1998. She was made a whole time worker on 26.11.2009 and is working as a daily wager with the respondent/department. Shri Sunil Kumar, Smt. Rani Devi, Shri Prem Singh and Shri Kashmir Singh were engaged for seasonal forestry works. Since the petitioner had absented herself from work, the question of her termination in the years 2013 or 2015 did not arise. She had been engaged on bill voucher basis as per the directions of the Additional Chief Secretary (Forests) to the Government of H.P. *vide* Notification No. FFE-B-C(1)-35/2009 dated 28.4.2009. No person junior to the petitioner had been engaged by the respondent. The petitioner is gainfully employed, being an agriculturist. Hence, it was prayed that the petition be dismissed.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 10.8.2018:

1. Whether time to time termination of service of the petitioner by the respondent during the year, 2011 to year, 2013 is/was legal and justified as alleged? . . .*OPP.*
2. Whether final termination of services of petitioner by the respondent during August, 2013 is/was legal and justified as alleged? . . .*OPP.*
3. If issue No. 1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Smt. Reeta Devi appeared as PW1 and tendered in evidence her statement by way of affidavit as Ex. PW1/A, copy of seniority list dated 31.12.2012 as Ex. PW1/B, copy of seniority list dated 30.11.2016 as Ex. PW1/C and copy of seniority list of daily wagers as Ex. PW1/D. The respondent examined one Shri Rajeev Kumar as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of mandays chart of the petitioner as Ex. RW1/B, copy of letter dated 19.12.2009 as Ex. RW1/C and copy of letter dated 27.9.2008 as Ex. RW1/D.

7. Arguments of the learned counsel for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

- |             |                       |
|-------------|-----------------------|
| Issue No. 1 | : Decided accordingly |
| Issue No. 2 | : Decided accordingly |
| Issue No. 3 | : Negative            |
| Issue No. 4 | : Yes                 |

Relief.

: Petition is dismissed per operative part of the Award.

**REASONS FOR FINDINGS****Issues No. 1 to 3 :**

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Reeta Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that she was engaged by the department in the month of January, 2011. Volunteered that, she was engaged in the year 2002. She denied that she was never engaged in the year 2002. She denied that there is seasonal work in the department. Self stated that, work is available throughout the year. She denied that she had worked on bill basis in the months of January, 2011 and July, 2013. She denied that after July, 2013, she had left the work of her own. She admitted that her mandays produced by the department is correct. She denied that she was never given fictional breaks. She also denied that she had not completed 240 days. She owns land, which she cultivates. She further denied that the department had not engaged any junior. She admitted that Shri Love Kumar was appointed as per the orders of the Court. She feigned ignorance that Shri Sunil Kumar and Smt. Rani Devi were senior to her. She admitted that Shri Shyam Singh and Smt. Nirmla Devi were appointed on compassionate grounds.

11. Ex. PW1/B is the copy of Divisional Level revised seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 31.12.2012.

12. Ex. PW1/C is the copy of Divisional Level revised seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 30.11.2016.

13. Ex. PW1/D is the copy of seniority list of Daily Wagers of Joginder Nagar Forest Division.

14. Conversely, Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the petitioner was kept at work in the year 2002. Volunteered that, as per the record the petitioner was kept at work in January, 2011. He admitted that during the period of service of the petitioner, no attendance or casual card was issued. Volunteered that, she had been engaged for seasonal work. He admitted that no notification has been issued regarding status of Forest Department as seasonal industry. He admitted that no notice had been issued for temporary work by the department. At present 27 forest workers are posted in Joginder Nagar Forest Division. He admitted that as per Ex. RW1/C Shri Shyam Singh was engaged as a daily waged beldar. He specifically admitted that as per the Court order Shri Love Kumar has been given the seniority and continuity in service without back wages and that his services have been regularized in the month of September, 2007. He denied that Shri Shyam Singh is junior to the petitioner. Self stated that he was appointed as a daily wager on compassionate grounds and is working with the department. He denied that the petitioner

had been given breaks from time to time upto the year 2013. He admitted that no notice had been given to the petitioner to report for duty nor any departmental inquiry had been initiated against her. He clearly denied that the petitioner is posted since the year 2002. Volunteered that, she did seasonal work as a casual labourer. He was categorical that there was no agreement with the petitioner that she had been kept at work on bill basis. Volunteered that, as per the notification of the government, she was kept at work on bill basis. He further admitted that Smt. Nirmla Devi figuring at serial No.1 in Ex. PW1/D is working since the year 2000 and she has been regularized.

15. Ex. RW1/B is the copy of the mandays chart relating to the petitioner.

16. Ex. RW1/C is the copy of letter dated 19.12.2009 regarding the policy to regulate the services of part-time workers.

17. Ex. RW1/D is the copy of letter dated 27.9.2008 regarding the appointment of sons, daughters/real relatives of Government servants died in harness-providing employment thereof.

18. It is the admitted case of the parties that the services of the petitioner had been engaged. According to the petitioner she had been engaged on daily waged basis in the year 2002, whereas it is the stand taken by the respondent that the petitioner had hired the work on bill basis from the respondent during the months of January, 2011 and July, 2013 only. The mandays chart Ex. RW1/B unfolds that the petitioner had worked under the respondent on bill basis only for the months of January, 2011 and July, 2013. The petitioner has not placed on record any document to show that her services had been engaged by the respondent as a daily wager in the year 2002. Then, while under cross-examination she admitted that her mandays chart was correct. Although, the respondent (RW1) in his examination-in-chief stated that the petitioner had worked intermittently for seasonal forestry works but, however, the respondent has not placed/exhibited on record any document evidencing that the services of the petitioner were engaged for carrying out seasonal works only to her (petitioner's) knowledge.

19. The version of the petitioner is that from the year of her initial engagement to the year 2013, artificial/fictional breaks in service were provided to her by the respondent. Her services were wrongly and illegally terminated by the respondent in the year 2013.

20. While denying the said facts, the respondent has pleaded that the petitioner had been hiring the work on bill basis from the respondent and had been receiving payments for the same. She had been doing the work intermittently as per her sweet will and convenience. No intentional breaks in service were provided to the petitioner at any point of time. She had abandoned the work. Her services were never finally terminated as alleged.

21. Firstly, I proceed to decide as to whether fictional breaks in service were given to the petitioner by the respondent as alleged?

22. Ex. RW1/B is the mandays chart relating to the petitioner. Its perusal discloses that the petitioner had worked under the respondent for a month each in the years 2011 and 2013.

23. If intentional breaks in service were being provided to the petitioner by the respondent time and again as alleged, then why she (petitioner) did not agitate the said fact earlier or at the time of the receipt of the payments for the working days actually put in by her? Ex. RW1/B unfolds that for the months of January, 2011 and July, 2013, the petitioner had worked under the respondent on bill basis. A person not working for a single day or for less than 50 days in the



whole year cannot be permitted to countenance that artificial/fictional breaks were provided to her by the respondent/department wrongly and illegally. The fact that the petitioner had remained tight lipped and complacent about her rights for about four years and had been receiving the payments without any protests speaks volumes about the truthfulness and veracity of her claim. To my mind, a false plea of intentional breaks has been put forth by the petitioner so as to derive the benefits of regular employee with a malafide intention and ulterior motive. No artificial/fictional breaks were given to the petitioner by the respondent during the course of her employment.

24. Now coming to the question as to whether in the month of August, 2013, the services of the petitioner were finally terminated by the respondent (as per the reference) or not?

25. In the reply, the respondent has specifically pleaded that the petitioner had hired the work on bill basis from the respondent/department during the months of January, 2011 and July, 2013. After July, 2013 the petitioner had not turned up to work of her own sweet will.

26. The version of the petitioner is that she had worked with the respondent/department upto the year 2013. In August, 2013 her services were terminated by the respondent wrongly and illegally. No doubt, as per the mandays chart Ex.RW1/B, the petitioner had worked upto July, 2013 but, however, it was itself suggested to the respondent (RW1) by the petitioner that she has been working since the year 2002. Although, the respondent denied the suggestion, but the putting of this suggestion itself by the petitioner leaves no doubt in mind that she claims that she is still serving the department. A Divisional level revised seniority list of casual labourers/daily wagers of Joginder Nagar Forest Division, as it stood on 30.11.2016 has also been placed on record by the petitioner as Ex. PW1/C. The name of the petitioner figures at serial No.104 of the list. This is an admitted document on the part of the petitioner, having been proved and exhibited on record by her. Had it been that the services of the petitioner had finally been terminated by the respondent in the month of August, 2013, her name ought not to have been reflected in the above said list. Therefore, I am at a loss to understand as to how it lies in the mouth of the petitioner to say that her services were disengaged by the respondent in August, 2013 in a wrongful manner. From the own suggestion put to the respondent by the petitioner, it can be gathered that she is still serving the department. The fact that the petitioner even after August, 2013 had worked with the respondent, finds support from the seniority list, Ex. PW1/C, as it reflected the seniority of the daily waged labourers, as it stood on 30.11.2016. In view of these facts, it can easily be said that the petitioner is not speaking the truth. Her services were never finally terminated by the respondent in the month of August, 2013, as alleged. As no retrenchment order was passed by the respondent in the month of August, 2013 it cannot be said that the termination/retrenchment order is illegal and unjustified.

27. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner and that her services were not finally terminated by the respondent during August, 2013. She is not entitled to any relief.

28. Issues No. 1 and 2 are decided accordingly, while issue No. 3 is answered in the negative and decided against the petitioner.

*Issue No. 4 :*

29. Taking into account my findings on issues No. 1 to 3 above, it held that the instant claim petition is not maintainable in the present form.

30. This issue is answered in the affirmative and in favour of the respondent.

*Relief :*

31. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of August, 2019.

Sd/-  
**(YOGESH JASWAL),**  
*Presiding Judge,*  
*Labour Court-cum-Industrial,*  
*Tribunal, Kangra at Dharamshala, H.P.*

---

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 174/2017

Date of Institution : 08.8.2017

Date of Decision : 02.08.2019

Shri Gian Chand s/o Shri Mehar Chand, r/o Village Kholi, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. . . *Petitioner.*

*Versus*

The Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P. . . *Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. S.K. Lakha, A.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Gian Chand s/o Shri Mehar Chand, r/o Village Kholi, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during June, 2011 to May, 2015 and finally terminated during June, 2015 by the Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P. without complying

with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer/management?"

2. The case of the petitioner, as set out in the statement of claim is that his services were engaged by the respondent on daily waged basis in the year 2007. He had worked under the supervision of Forest Range Officer, Joginder Nagar upto the year 2015. The latter used to disengage his services without any written order so that he could not complete more than 240 days during the aforesaid period for the purposes of the provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short). The services of the petitioner had been finally terminated by the respondent in the year 2015. Fictional breaks from time to time were given by the respondent from the year 2007 upto the year 2015. It is also asserted that while terminating the services of the petitioner in the year 2015 the respondent had not followed the principle of 'last come first go', as persons junior to him, namely, S/Smt./Shri Shyam Singh, Sheela Devi, Sunil Kumar, Rani Devi, Prem Singh and Kashmir Singh were retained in service without any breaks and all these workers are still working with the respondent/department. No muster roll, casual card and wages slip had ever been provided to the petitioner by the respondent. He had raised a demand notice on 22.9.2015 against the respondent. Its copy stood forwarded to the Labour-Inspector-cum-Conciliation Officer, Joginder Nagar. Demand notice was responded to by the respondent, wherein it was denied that the petitioner was engaged in the year 2007 and had worked upto the year 2015. It was claimed that he had been engaged in the year 2011 and that he had worked as such upto the year 2015 on bill voucher basis. At the time of termination of his services, the petitioner had completed more than 240 days. The act and conduct of the respondent is highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objection regarding lack of maintainability. The contents of the petition were denied on merits. However, it was asserted that the petitioner was engaged as a casual labourer in the department during June, 2011 on bill basis and for seasonal forestry works, as per the availability of work and funds. The works carried out by the forest department include plantation, fire protection and soil moisture conservation works, which all are seasonal and site specific. Depending upon the need, the department employs labour on the basis of seasonal requirement for its labour works. The demand of such labour is always fluctuating, depending upon the workload etc. It also depends upon the financial allocation to the works, to be carried out in a year. For each and every work, norms are specified. The daily waged workers are not engaged against any regular vacancy and there is no post of casual labourer in the forest department. Since, the department is not a Work Charged Establishment and the daily wagers are not engaged against regular establishment, so there is not regular budget provision for their wages in the annual budget of the department. The wages are paid out of the funds earmarked for the work, for which they are engaged. Since, there is not much work with the department, the labourers are engaged on daily or on monthly basis only. The petitioner worked intermittently, as per the availability of work and funds on seasonal forestry works on bill basis from June, 2011 and had never worked on daily waged basis. The respondent/department never terminated the services of the petitioner. He had not completed 240 days in the preceding twelve calendar months to fulfill the conditions of Section 25-B of the Act. So, there is no violation of Section 25-F of the Act. Work is provided to the seasonal/casual workers as per its availability and funds. The respondent had followed the principle of 'last come first go' strictly and no fresh hands had been engaged. The services of Shri Shyam Singh were engaged as a contingent paid worker under died in harness policy after the death of his father. Smt. Sheela Devi was engaged as a part-time worker w.e.f. July, 1998. She was made a whole

time worker on 26.11.2009 and is working as a daily wagger with the respondent/department. Shri Sunil Kumar, Smt. Rani Devi, Shri Prem Singh and Shri Kashmir Singh were engaged for seasonal forestry works. Since the petitioner had absented himself from work, the question of his termination during the year 2015 did not arise. He had been engaged on bill voucher basis as per the directions of the Additional Chief Secretary (Forests) to the Government of H.P. *vide* Notification No. FFE-B-C(1)-35/2009 dated 28.4.2009. No junior to the petitioner had been engaged by the respondent. The petitioner is gainfully employed, being an agriculturist. Hence, it was prayed that the petition be dismissed.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 12.9.2018:

1. Whether time to time termination of service of the petitioner by the respondent during June, 2011 to May, 2015 is/was legal and justified as alleged? . . *OPP*.
2. Whether final termination of services of petitioner by the respondent during June, 2015 is/was legal and justified? . . *OPP*.
3. If issue No. 1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . . *OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . *OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Gian Chand appeared as PW1 and tendered in evidence his statement by way of affidavit as Ex. PW1/A, copy of seniority list dated 30.11.2016 as Ex. PW1/B, copy of seniority list of daily wagers as Ex. PW1/C and copy of seniority list dated 31.12.2012 as Ex. PW1/D. The respondent examined one Shri Rajeev Kumar as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of mandays chart of the petitioner as Ex. RW1/B, copy of letter dated 19.12.2009 as Ex. RW1/C and copy of letter dated 27.9.2008 as Ex. RW1/D.

7. Arguments of the learned counsel for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Decided accordingly

Issue No. 2 : Decided accordingly

Issue No. 3 : Negative

Issue No. 4 : Yes

Relief. : Petition is dismissed per operative part of the Award.

**REASONS FOR FINDINGS***Issues No.1 to 3 :*

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Gian Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he had worked after the year 2015 with the department. Volunteered that, he had been kept again in March, 2017. He denied that the department had not given any breaks and that he had left the work of his own. He also denied that there is seasonal work in the department. Self stated that work is available throughout the year. Further, he denied that he had worked on bill basis since June, 2011. It was also denied by him that he had not worked from the year 2007 upto May, 2011. He admitted that he had not completed 240 days in any year. He owns land, which he cultivates. He denied that the department had not engaged any junior. He feigned ignorance that Smt. Sheela Devi was kept at work as a part-time in the month of July, 1998. He admitted that Shri Love Kumar was appointed as per the orders of the Court. He also admitted that Shri Shyam Singh was appointed on compassionate grounds. He feigned ignorance that these days S/Smt./Shri Sunil Kumar, Rani Devi, Prem Singh and Kashmir Singh were not working with the department.

11. Ex. PW1/B is the copy of Divisional Level revised seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 30.11.2016.

12. Ex. PW1/C is the copy of seniority list of Daily Wagers of Joginder Nagar Forest Division.

13. Ex. PW1/D is the copy of Divisional Level revised seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 31.12.2012.

14. Conversely, Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he admitted that as per the record the petitioner was kept at work in June, 2011. He also admitted that at the time of engagement of the petitioner, no appointment letter was issued. Further, he admitted that during the period of service of the petitioner, no attendance or casual card was issued. Volunteered that, he was kept at work being of seasonal nature. He further admitted that no notification has been issued regarding the status of Forest Department as a seasonal industry. He denied that the respondent had intentionally given fictional breaks to the petitioner. He admitted that no notice had been issued for temporary work by the department. At present 27 forest workers are posted in Joginder Nagar Forest Division. He feigned ignorance that Smt. Nirmla Devi was kept at work in the year 1998. He admitted that as per Ex. RW1/D Shri Shyam Singh was engaged as a daily waged beldar. He specifically admitted that as per the Court order Shri Love Kumar has been given the seniority and continuity in service without back wages and that his services have been regularized in the month of September, 2007. He denied that Shri Shyam Singh is junior to the petitioner. Self

stated that he was appointed as a daily wager on compassionate grounds and is working with the department. He admitted that no notice had been given to the petitioner to report for duty nor any departmental inquiry had been initiated against him. He was categorical that there was no agreement with the petitioner that he had been kept at work on bill basis. Volunteered that, as per the notification of the government, he was kept at work on bill basis. He further admitted that Smt. Nirmla Devi figuring at serial No. 1 in Ex. PW1/C is working since the year 2000 and that she has been regularized.

15. Ex. RW1/B is the copy of the mandays chart relating to the petitioner.

16. Ex. RW1/C is the copy of letter dated 19.12.2009 regarding policy to regulate the services of part time workers from Principal CCF, H.P.

17. Ex. RW1/D is the copy of letter dated 27.9.2008 regarding appointment of sons, daughters/real relatives of Government servants died in harness-providing employment thereof.

18. It is the admitted case of the parties that the services of the petitioner were engaged in the month of June, 2011. Though, the respondent (RW1) in his examination-in-chief stated that the petitioner was employed as a casual labourer but, however, he has not placed and exhibited on record any document evidencing that the services of the petitioner were engaged as a casual/seasonal labourer for carrying out the seasonal works only to his (petitioner's) knowledge.

19. The version of the petitioner is that from the year of his initial engagement to the year 2015, artificial/fictional breaks in service were provided to him by the respondent. His services were wrongly and illegally terminated by the respondent in the year 2015.

20. While denying the said facts, the respondent has pleaded that the petitioner was only a casual/seasonal worker, who used to work intermittently as per his sweet will and convenience. No intentional breaks in service were provided to the petitioner at any point of time. Since the year 2011, the petitioner had been hiring the work from the respondent/department on bill basis and had been receiving the payments for the execution of the works. He is still working with the respondent on bill basis. His services were never finally terminated as alleged.

21. Firstly, I proceed to decide as to whether fictional breaks in service were given to the petitioner by the respondent as alleged?

22. Ex. RW1/B is the mandays chart relating to the petitioner. Its perusal discloses that the petitioner had worked under the respondent from the month of June, 2011 to March, 2017. The petitioner (PW1) admitted in his cross-examination that he had never worked for 240 days in any year.

23. If intentional breaks in service were being provided to the petitioner by the respondent time and again as alleged, then why he (petitioner) did not agitate the said fact earlier or at the time of the receipt of the payments for the working days actually put in by him? Ex. RW1/B unfolds that the petitioner had worked for the respondent on bill basis for the months of June, September and November, 2011; April, August, October, November & December, 2012; March, April, May, June and December, 2013; January to March and August, & October to December, 2014; January, February and May, 2015 and March, 2017. A person not working for a single day or for less than 100 days in the whole year cannot be permitted to countenance that artificial/fictional breaks were provided to him by the respondent/department wrongly and illegally. The fact that the petitioner had remained tight lipped and complacent about his rights

for about two years and had been receiving the payments without any protests speaks volumes about the truthfulness and veracity of his claim. To my mind, a false plea of intentional breaks has been put forth by the petitioner so as to derive the benefits of regular employee with a malafide intention and ulterior motive. No artificial/fictional breaks were given to the petitioner by the respondent during the course of his employment.

24. Now coming to the question as to whether in the month of June, 2015, the services of the petitioner were finally terminated by the respondent (as per the reference) or not?

25. The version of the petitioner is that he had worked with the respondent/department upto the 2015. In the said year his services were terminated by the respondent wrongly and illegally. It is not the case of the petitioner that the mandays chart Ex. RW1/B produced by the respondent is incorrect. Rather, he while under cross-examination was categorical that even after the year 2015 he had worked in the department. The mandays chart reveals that the petitioner had worked for the months of January, February and May, 2015. After that, he had worked for the month of March, 2017 under the respondent. Since, the petitioner served the respondent after June, 2015, as he had worked in the month of March, 2017 with the department, I am at a loss to understand as to how it lies in his mouth to say that his services were disengaged by the respondent in June, 2015 in a wrongful manner. From the statement made by the petitioner (PW1), it can be gathered that even after the year 2015 he had worked with the respondent. The said fact finds support from the mandays chart, Ex. RW1/B. In view of these facts, it can easily be said that the petitioner is not speaking the truth. His services were never finally terminated by the respondent in the month of June, 2015, as alleged. As no retrenchment order was passed by the respondent in the month of June, 2015, it cannot be said that the termination/retrenchment order is illegal and unjustified.

26. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner and that his services were not finally terminated by the respondent during June, 2015. He is not entitled to any relief.

27. Issues No. 1 and 2 are decided accordingly, while issue No. 3 is answered in the negative and decided against the petitioner.

*Issue No. 4 :*

28. Taking into account my findings on issues No. 1 to 3 above, it is held that the instant claim petition is not maintainable in the present form.

29. This issue is answered in the affirmative and in favour of the respondent.

*Relief :*

30. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 12/2017

Date of Institution : 05.01.2017

Date of Decision : 05.8.2019

Shri Prakash Chand s/o Shri Minku Ram, r/o Village Dhaneti, P.O. Dhaneti Bhurian,  
Tehsil Nurpur, District Kangra, H.P. . *Petitioner.*

*Versus*

1. The Executive Engineer, HPPWD Division, Jawali, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D., Division, Nurpur, District Kangra, H.P. . *Respondents.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Mukul Vaid, Adv. Vice

For the Respondents : Sh. S.K. Lakha, A.D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the alleged termination of services of Sh. Prakash Chand, s/o Sh. Minku Ram, r/o Village Dhaneti, P.O. Dhaneti Bhurian, Tehsil Nurpur, Distt. Kangra, H.P. by (1) the Executive Engineer, H.P.P.W.D. Jawali, Distt. Kangra, H.P. and (2) the Executive Engineer, HPPWD Nurpur, Distt. Kangra, H.P. during the year, 1991, who had worked on daily wages as beldar and has raised his industrial dispute after more than 19 years *vide* demand notice dated nil received in the office of Labour Officer Kangra at Dharamshala on 13-6-2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis during the year 1986 in HPPWD Sub Divisions-I and II, Nurpur and had worked as such upto the year 1990. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para No. 3 of the petition. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false



assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were re-engaged on 25.5.2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. Respondent No. 1 filed a reply taking preliminary objections, regarding lack of maintainability and that the petition was bad on the grounds of delay and laches. On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali vide HP Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1986 upto the year 1990. It was asserted that the petitioner had never worked with the respondents. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. The petitioner had not completed 240 days in any calendar year as well as he had not fulfilled the criteria of the provisions of Section 25-B of the Act. The petitioner had never worked with the respondent so the question of violation of the provisions of Sections 25-G and 25-H of the Act does not arise. It is denied that the respondents had not followed the principle of 'last come first go'. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 23.1.2019:

1. Whether termination of services of the petitioner by the respondents during year, 1991 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on the ground of delay and laches as alleged? . . .*OPR.*

Relief :

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Assistant District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondents.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition dismissed *vide* operative portion of the Award.

### REASONS FOR FINDINGS

*Issue No. 1 and 2 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondents in the year 1990 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis in the year 1986 and had continuously worked as such till the year 1990. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. A plea was also taken by the petitioner that the respondents had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 240 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It was contended by the learned Assistant District Attorney for the respondents that the petitioner had never been engaged by the respondents so the question of completing 240 days did not arise, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

12. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

13. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year 1990. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

14. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

*"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

15. The petitioner in paragraph 3 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, Shri Rai Singh and twenty three others who were junior to him, were retained in service by the respondents. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondents had violated the provisions of Section 25-G of the Act.

16. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondents. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

17. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

*Issue No. 3 :*

18. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondents at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondents.

*Issue No. 4 :*

19. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as*

*a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondents.

*Relief :*

21. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

---

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 808/2016

Date of Institution : 24.11.2016

Date of Decision : 05.8.2019

Shri Thurudeen s/o Shri Sharmadeen, r/o Village Kharod and P.O. Khanni, Tehsil Nurpur, District Kangra, H.P. . *Petitioner.*

*Versus*

1. The Executive Engineer, H.P.P.W.D., Division, Nurpur, District Kangra, H.P.

2. The Executive Engineer, HPPWD Division, Jawali, District Kangra, H.P.

. *Respondents.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Mukul Vaid, Adv. Vice

For the Respondents : Sh. S.K. Lakha, A.D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the alleged termination of services of Shri Thurudeen s/o Shri Shamradeen, r/o Village Kharod and P.O. Khanni, Tehsil Nurpur, District Kangra, H.P. during year 1990 by (i) The Executive Engineer, Nurpur Division, HPPWD, Nurpur, District Kangra, H.P. (ii) The Executive Engineer, Jawali Division, HPPWD, Jawali, District Kangra, H.P., who had worked on daily wages basis as beldar and has raised his industrial dispute after about 22 years *vide* demand notice dated nil received in the office of Labour Officer Dharamshala on 29-11-2012 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of about 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis during the year 1985 in HPPWD Sub Divisions-I and II, Nurpur and had worked as such upto the year 1990. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para No. 3 of the petition. The mates of the petitioner were Shri Prakash Chand, Som Singh, Budhi Singh, Wazir Singh and Mahashu Ram. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No. 1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were re-engaged on 25.5.2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections, regarding lack of maintainability and that the petition was bad on the grounds of delay and laches. On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1985 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondents so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been

engaged by the respondents, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondents. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 01.12.2018:

1. Whether termination of the service of petitioner by the respondents during year, 1990 is/was legal and justified as alleged? .. *OPP.*
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? .. *OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? .. *OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged? .. *OPR.*

Relief :

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Assistant District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondents.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Yes
Issue No. 2	: No
Issue No. 3	: No
Issue No. 4	: No
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

### REASONS FOR FINDINGS

#### Issue No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondents in the year 1990 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in the year 1985 and had continuously worked as such till the year 1990. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. A plea was also taken by the petitioner that the respondents had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 240 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It was contended by the learned Assistant District Attorney for the respondents that the petitioner had never been engaged by the respondents so the question of completing 240 days did not arise, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

12. Section 25-B of the Act defines "continuous service". In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

13. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year 1990. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

14. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

*"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

15. The petitioner in paragraph 3 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, Shri Rai Singh and twenty three others who were junior to him, were retained in service by the respondents. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the

petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondents had violated the provisions of Section 25-G of the Act.

16. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondents. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

17. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

*Issue No. 3 :*

18. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondents at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondents.

*Issue No. 4 :*

19. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondents.

*Relief :*

21. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.



**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)**

Ref. No. : 246/2016

Date of Institution : 21.04.2016

Date of Decision : 08.08.2019

Shri Karam Chand s/o Shri Mohan, r/o Village Chanehla, P.O. Preena, Tehsil and District Chamba, H.P. . *Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Division, Bharmaur, District Chamba, H.P. . *Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Nemo.

For the Respondent : Sh. Manoj Kumar, ADA

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Karam Chand s/o Shri Mohan, r/o Village Chanehla, P.O. Preena, Tehsil and District Chamba, H.P. during February, 2003 by the Executive Engineer, H.P.P.W.D. Division, Bharmaur, District Chamba, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 7 years *vide* demand notice dated 30.05.2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case was listed for filing of power of attorney and statement of claim on behalf of the petitioner for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due knowledge of the date of hearing, petitioner had remained *ex parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

*“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”*

5. Rule 22 reads thus:—

*“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”*

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

*“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.— If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”*

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the petitioner nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services *w.e.f.* February, 2003 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner. At the risk of repetition the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of August, 2019.

Sd/-  
**(YOGESH JASWAL),**  
*Presiding Judge,*  
*Labour Court-cum-Industrial,*  
*Tribunal, Kangra at Dharamshala, H.P.*

---

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)**

Ref. No. : 36/2018  
Date of Institution : 19.04.2018  
Date of Decision : 08.08.2019

Shri Noor Mohd. s/o Shri Gulam Rasool, r/o Village Kudtha, P.O. Sahoo, Tehsil & District Chamba, H.P. . .Petitioner.

*Versus*

General Manager, M/s Sahoo Hydro Power Project, Village Kurtha, P.O. Sahoo, Tehsil & District Chamba, H.P. . .Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Nemo  
For the Respondent : Miss Bandna, adv. Vice

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Noor Mohd. s/o Shri Gulam Rasool, r/o Village Kudtha, P.O. Sahoo, Tehsil & District Chamba, H.P. during October, 2015 (as alleged by the workman) by the General Manager, M/s Sahoo Hydro Power Project, Village Kurtha, P.O. Saho, Tehsil & District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was initially engaged by the respondent on daily waged basis on muster roll as a labourer without any

appointment letter during the year 2012. The petitioner had been worked with the respondent continuously for many years. The respondent had undertaken that the company will provide job for a period of forty years to the petitioner/workman, as the land of the petitioner was given for construction of the project. During October, 2015 the services of the petitioner had been terminated by the respondent. The petitioner is a very poor man and as such he has no source of income. After termination of his services, he had approached the respondent, but without success. The services of the petitioner had orally been terminated by the respondent. The respondent had not complied with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The petitioner had worked with the respondent upto October, 2015, when his services were disengaged by the respondent illegally and wrongly without issuing any prior notice to him, as required under Section 25-F of the Act. While terminating the services of the petitioner, the respondent had not followed the principle of 'last come first go'. The respondent had not followed the mandatory provisions of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, misjoinder of necessary parties, suppression of material facts and cause of action. The contents of the petition were denied on merits. It was asserted that the answering respondent had never engaged the petitioner as a labourer. No land of the petitioner had ever been acquired or purchased by the respondent, so the question of providing forty years job to him does not arise. The petitioner was awarded various works as a contractor of the respondent company from the year 2012 upto the year 2016 and he had received payment of Rs.40,00,000/-. The petitioner was never engaged by the respondent so the question of termination of his service did not arise. It was denied that the respondent had not complied with the provisions of Sections 25-F, 25-G and 25-H of the Act. The respondent, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Arguments of the learned vice counsel for the respondent heard and records gone through.

6. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent during October, 2015 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis on muster roll as a labourer in the year 2012. It was also his claim that he had completed 240 days in each calendar year. A plea was also taken to the effect that the respondent had not adhered to the principle of 'last come first go', as persons junior to the petitioner were retained and that fresh hands had also been engaged. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

7. However, when the case was listed for filing of the documents and settlement of issues for 08.8.2019, neither he nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

8. It will be apt at this stage to take note of the relevant provisions of the Act. Section 2 (b) of the Act defines the Award as under:—

*“(b) ‘award’ means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.*

9. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

*“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”*

10. Rule 22 reads thus:—

*“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”*

11. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

*“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”*

12. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, they are unwilling to adduce evidence or argue their case.

13. In the instant case, neither the petitioner nor his counsel had put in appearance before this Tribunal on 8.8.2019. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

14. Since, it is disputed by the respondent that the services of the petitioner had been engaged on daily wage basis, so firstly it was required of the petitioner to prove on record that he had been engaged by the department on daily waged basis and then to establish on record, as per the reference, that the termination of his services in the year 2015 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but his allegations therein have remained a mere saying on record, as no evidence in support thereof has been led by him. At the risk of repetition, the petitioner had not put in appearance before this Tribunal. In this view of the

matter, the petitioner is not entitled to any relief, as claimed for in the statement of claim. Hence, both these issues are decided against the petitioner and in favour of the respondents.

15. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

---

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)**

Ref. No. : 427/2016  
Date of Institution : 19.8.2016  
Date of Decision : 08.08.2019

Smt. Shanti w/o Shri Sesar Chand, r/o Village Gissal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. . . .Petitioner.

*Versus*

The Executive Engineer, H.P.P.W.D. Killar Division (Pangi), Tehsil Pangi, District Chamba, H.P. . . .Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. I.S. Jaryal, AR  
For the Respondent : Sh. Manoj Kumar, ADA

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Smt. Shanti w/o Shri Sesar Chand, r/o Village Gissal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. during year, 2005 by the Executive Engineer, H.P.P.W.D. Killar Division, (Pangi) District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by

the workman, is legal and justified; whereas she has raised the industrial dispute *vide* demand notice dated 02/09/2013 after lapse of more than 8 years. If not, keeping in view delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as daily waged beldar on muster roll basis in the year, 1992. She continuously worked with intermittent breaks upto September, 2005 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of 'last come first go'. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). At the time of her termination, the persons junior to her were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are Shri Hukkam Chand and twenty seven others. She was not given an opportunity of reemployment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of Constitution of India. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petitioner were denied on merits. It has been denied that the services of the petitioner were engaged by the respondent as a daily waged beldar on muster roll basis during the year 1992 and that she had continuously worked with intermittent breaks upto the year 2005. It was asserted that the petitioner had never been engaged by the respondent to do any work. The respondent, thus, prays for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 12.6.2018:

1. Whether termination of service of petitioner by the respondent during year 2005 is/was legal and justified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Smt. Shanti appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A and copies of mandays chart of junior workers as Ex.PW1/B to Ex.PW1/L. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of the petitioner as Ex.RW1/B and copy of mandays chart of workers as Ex.RW1/C.

7. Arguments of the learned authorized representative for the petitioner and learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2 : No

Issue No. 3 : Not pressed

Issue No. 4 : No

Relief : Petition is dismissed as per operative part of the Award.

### REASONS FOR FINDINGS

*Issues No. 1 and 2 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Shanti (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that neither she had been kept at work, nor had worked for the department. Volunteered that, she had worked in the department from the year 1992 upto the year 2005. She categorically denied that from the year 1992 upto the year 2005, she had never worked with the respondent/department. She also denied that she had not worked for 160 days in all the years to fulfill the criteria of tribal area. She denied that in the tribal area of Pangi the work is done only from the month of April upto the month of October, as thereafter the area remains snowbound. She also denied that she had never marked her presence with the department during the working months. She works as an agriculturist and these days is earning her livelihood from agricultural chores. She specifically denied that the co-workers have been re-engaged as per the orders of the Court.

11. Ex. PW1/B is the year-wise mandays chart relating to Smt. Chhin Dei and three others.

12. Ex. PW1/C is the copy of seniority/regularization of daily waged workers relating to S/Shri Dev Raj and Goutam Singh.

13. Ex. PW1/D is the copy of regularization of daily waged workers relating to Shri Tek Chand and four others.



14. Ex. PW1/E is the copy of year-wise mandays detail relating to Shri Shiv Kumar and thirteen others.

15. Exts. PW1/F to I are the copies of seniority list with respect to Shri Sucheta Ram and others.

16. Exts. PW1/J to L are the year-wise mandays chart relating to Shri Chunku Ram and others working under the respondents.

17. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

18. In the cross-examination, he admitted that the muster rolls of the petitioner have not been annexed with the reply. Volunteered that, they can be produced on the directions of the Court. He was categorical that as per the record when the petitioner had left the work, no notice was given to her. He also admitted that no departmental proceedings were initiated against her. He also clearly admitted that as per the record the petitioner had never been called for work again. He further admitted that generally the work remains stalled from November till April. Self stated that, as per the requirement during these months also muster rolls of the labourers are issued. He admitted that Ex. PW1/B to Ex. PW1/L to have been issued by their office.

19. Ex. RW1/B is the mandays chart relating to the petitioner.

20. Ex. RW1/C is the mandays chart relating to other workers.

21. The version of the petitioner is that her services were engaged as a daily waged beldar by the respondent in the year 1992 and that she had worked as such till the year 2005. It was the stand taken by the respondent that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in her cross-examination denied the fact that she had never been engaged as a daily waged beldar in the year 1992 by the respondent and that she had not worked as such upto the year, 2005 but, however, the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal reveals that the petitioner had never worked with the respondent even for a single day from the year 1992 upto the year 2004. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Significantly, the petitioner neither in her pleadings, nor in her ocular evidence has stated the date and month in which she was engaged by the respondent. There is also no pleading or evidence to the effect as to on which specific date her services stood terminated by the respondent. Only the years of joining and termination of the petitioner stand specified in the statement of claim and her statement by way of affidavit Ex. PW1/A. No other witness was examined by the petitioner from HPPWD, Division, Killar, who had seen her working as a daily waged beldar with the respondent. Then, it is nowhere the case of the petitioner that she had ever marked her attendance in all those thirteen years, the period for which she claims to have worked with the respondent. Had there been any attendance register in which the petitioner had appended her signatures, she ought to have placed and exhibited on record the same so as to show that her services had been engaged by the respondent from the year 1992 upto the year 2005. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondent during the pendency of this case. Further, the petitioner herself claims that she had been engaged as a daily waged beldar on muster roll basis. She could have proved the muster rolls for the period for which she had worked. But, no such muster roll has been produced.

Even no appointment letter to show that the services of the petitioner had been engaged by the respondent, has been placed on record by her.

22. From the ocular and documentary evidence of the respondent available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondent.

23. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondent, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondent can also not be held to have violated the provisions of Sections 25-G and 25-H of the Act, as the relationship of the petitioner and the respondent being that of a workman and employer stands not established on record.

24. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced her to file a totally false and baseless claim. She is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

*Issue No. 3 :*

25. Not pressed.

*Issue No. 4 :*

26. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

27. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

*Relief :*

28. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)**

Ref. No. : 541/2016

Date of Institution : 23.8.2016

Date of Decision : 08.08.2019

Shri Dev Raj s/o Shri Ali Chand, r/o Village and P.O. Sahali, Tehsil Pangi, District Chamba, H.P. . . . *Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Killar Division (Pangi), Tehsil Pangi, District Chamba, H.P. . . . *Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Manoj Kumar, ADA

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Dev Raj s/o Shri Ali Chand, r/o V. & P.O. Sahali, Tehsil Pangi, District Chamba, H.P., during year 2005 by the Executive Engineer, H.P.P.W.D. Killar Division, (Pangi) Tehsil Pangi, District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas he has raised the dispute vide demand notice dated 18/01/2013 after lapse of more than 8 years. If not, keeping in view delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged beldar on muster roll basis in the year, 1994. He continuously worked with intermittent breaks upto October, 2005 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘last come first go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of his termination, the persons junior to him were retained in service by the respondent. The names of

the juniors, who were retained in service by the respondent are S/Shri Jai Dass and twenty two others. He was not given an opportunity of reemployment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of Constitution of India. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petitioner were denied on merits. It has been denied that the services of the petitioner were engaged by the respondent as a daily waged beldar on muster roll basis during the year 1994 and that he had continuously worked with intermittent breaks upto the year 2005. It was asserted that the petitioner had never been engaged by the respondent to do any work. The respondent, thus, prays for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 12.6.2018:

1. Whether termination of service of petitioner by the respondent during year, 2005 is/was legal and justified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Dev Raj appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A and copies of mandays chart of junior workers as Ex.PW1/B to Ex.PW1/L. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of the petitioner as Ex.RW1/B and copy of mandays chart of workers as Ex.RW1/C.

7. Arguments of the learned authorized representative for the petitioner and learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2 : No

Issue No. 3 : Not pressed

Issue No. 4 : No

Relief. : Petition is dismissed as per operative part of the Award.

### REASONS FOR FINDINGS

*Issues No. 1 and 2 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Dev Raj (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that neither he had been kept at work, nor had worked for the department. Volunteered that, he had worked in the department from the year 1994 upto October, 2005. He also denied that he had not worked for 160 days in all the years to fulfill the criteria of tribal area. He denied that in the tribal area of Pangi the work is done only from the month of April upto the month of October, as thereafter the area remains snowbound. He also denied that he had never marked his presence with the department during the working months. He works as an agriculturist and these days is earning his livelihood from agricultural chores. He is doing days' drudgery privately. He specifically denied that the co-workers have been re-engaged as per the orders of the Court.

11. Ex. PW1/B is the year-wise mandays chart relating to Smt. Chhin Dei and three others.

12. Ex. PW1/C is the copy of seniority/regularization of daily waged workers relating to S/Shri Dev Raj and Goutam Singh.

13. Ex. PW1/D is the copy of regularization of daily waged workers relating to Shri Tek Chand and four others.

14. Ex. PW1/E is the copy of year-wise mandays detail relating to Shri Shiv Kumar and thirteen others.

15. Exts. PW1/F to I are the copies of seniority list with respect to Shri Sucheta Ram and others.

16. Exts. PW1/J to L are the year-wise mandays chart relating to Shri Chunku Ram and others working under the respondents.

17. Conversely, Shri B. K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

18. In the cross-examination, he admitted that the muster rolls of the petitioner have not been annexed with the reply. Volunteered that, they can be produced on the directions of the Court. He was categorical that as per the record when the petitioner had left the work, no notice

was given to her. He also admitted that no departmental proceedings were initiated against him. He also clearly admitted that as per the record the petitioner had never been called for work again. He further admitted that generally the work remains stalled from November till April. Self stated that, as per the requirement during these months also muster rolls of the labourers are issued. He admitted that Ex. PW1/B to Ex. PW1/L have been issued by their office.

19. Ex. RW1/B is the mandays chart relating to the petitioner.

20. Ex. RW1/C is the mandays chart relating to other workers.

21. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1994 and that he had worked as such till October, 2005. It was the stand taken by the respondent that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never worked with the department but, however, the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal reveals that the petitioner had never worked with the respondent even for a single day from the year 1994 upto the year 2005. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Significantly, the petitioner neither in his pleadings, nor in his ocular evidence has stated the date in which he was engaged by the respondent. There is also no pleading or evidence to the effect as to on which specific date and month his services stood terminated by the respondent. Only the years of joining and termination of the petitioner stand specified in the statement of claim and his statement by way of affidavit Ex. PW1/A. No other witness was examined by the petitioner from HPPWD, Division, Killar, who had seen him working as a daily waged beldar with the respondent. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those eleven years, the period for which he claims to have worked with the respondent. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondent from the year 1994 upto the year 2005. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondent during the pendency of this case. Further, the petitioner himself claims that he had been engaged as a daily waged beldar on muster-roll basis. He could have proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondent, has been placed on record by him.

22. From the ocular and documentary evidence of the respondent available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondent.

23. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondent, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondent can also not be held to have violated the provisions of Sections 25-G and 25-H of the Act, as the relationship of the petitioner and the respondent being that of a workman and employer stands not established on record.

24. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and

baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

*Issue No. 3 :*

25. Not pressed.

*Issue No. 4 :*

26. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82*, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

27. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

*Relief :*

28. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

---

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)

Ref. No. : 599/2015  
Date of Institution : 19.12.2015  
Date of Decision : 08.08.2019

Shri Surjeet s/o Shri Mani Ram, r/o Village and Post Office Rei, Tehsil Pangi, District Chamba, H.P. . . *Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Killar Division (Pangi), Tehsil Pangi, District Chamba, H.P. . . *Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Manoj Kumar, ADA

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Surjeet s/o Shri Mani Ram, r/o Village and Post Office Rei, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.P.H/H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 27.08.2012 regarding his alleged illegal termination of service during August, 2004 suffers from delay and laches? If not, Whether termination of the Shri Surjeet s/o Shri Mani Ram, r/o Village and Post Office Rei, Tehsil Pangi, District Chamba, H.P. during August, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged beldar on muster roll basis in the month of April, 1995. He continuously worked with intermittent breaks upto August, 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘last come first go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of his termination, the persons junior to him were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are Shri Hukkam Chand and twenty seven others. He was not given an opportunity of reemployment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of Constitution of India. The petitioner, thus, prays for his re-engagement with all consequential benefits.



3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petitioner were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1999 and who remained engaged till the year 2004. He had worked intermittently with the department and had left the job of his own sweet will, and had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner mentioned at serial Nos. 1 to 24, 26 & 28 in para No. 4 of the claim petition were appointed as per order of the Labour Court and at serial Nos. 25 & 27 as harness case. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of his own, there was no need of serving a notice upon him or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2004, he certainly would have raised an industrial dispute, but the same was raised by him before the Labour Officer only in the year 2012, *i.e.* after about eight years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages. The respondent, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 04.10.2017:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 27-08-2012 qua his termination of service during August, 2004 by respondent suffers from the vice of delay and laches as alleged? . . .*OPP.*
2. Whether termination of the services of petitioner by the respondent during August, 2004 is/was illegal and unjustified as alleged? . . .*OPP.*
3. If issue No. 1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Assistant District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned authorized representative for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition dismissed *vide* operative portion of the Award.

### REASONS FOR FINDINGS

*Issues No. 2 and 3 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in August, 2004 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in the year 1995 and had continuously worked as such till the year 2004. It was also his claim that notional breaks were given to him by the department from the year 1980 upto the year 2004 so that he could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned Assistant District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the

number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer. (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of August, 2004. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The principle of "last come first go" is envisaged under Section 25-G of the Act. The said Section provides:

*"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

16. The petitioner in paragraph 4 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, Shri Hukkam Chand and twenty seven others, who were junior to him, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

#### **Issue No. 4 :**

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

**Issue No. 1 :**

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82*, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

**Relief :**

22. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

---

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)**

Ref. No. : 165/2016  
Date of Institution : 17.3.2016  
Date of Decision : 08.08.2019

Smt. Chatri w/o Shri Seeta Ram, r/o Village Kuthal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. . . . Petitioner.

*Versus*

The Executive Engineer, H.P.P.W.D. Killar Division (Pangi), Tehsil Pangi, District Chamba, H.P. . . . Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Manoj Kumar, ADA

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Chatri w/o Shri Seeta Ram, r/o Village Kuthal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. *vide* demand notice dated 23-10-2011 regarding alleged illegal termination of her services during September, 2004 suffers from delay and laches? If not, Whether termination of services of Smt. Chatri w/o Shri Seeta Ram, r/o Village Kuthal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. during September, 2004, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as daily waged beldar on muster roll basis in the year 1994. She continuously worked with intermittent breaks upto September, 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘last come first go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of her termination, the persons junior to her were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are Shri Jai Dass and twenty two others. She was not given an opportunity of reemployment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of Constitution of India. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1994 and who remained engaged till the year 2004. She had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the

services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner mentioned at serial Nos. 1 to 19 & 21 and 23 in para No. 4 of the claim petition were appointed as per order of the Labour Court and at serial Nos. 20 & 22 as harness case. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2004, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2011, *i.e.* after about seven years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages. The respondent, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 04.10.2017:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 23-10-2011 qua her termination of service during Sept., 2004 by respondent suffers from the vice of delay and laches as alleged? .*OPP.*
2. Whether termination of the services of petitioner by the respondent during Sept., 2004 is/was illegal and unjustified as alleged? .*OPP.*
3. If issue No. 1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? .*OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged? .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and her evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, she had failed to lead her evidence. Since, no evidence was led on record by the petitioner, the learned Assistant District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned authorized representative for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : No

Issue No.2 : No

Issue No.3	: No
Issue No.4	: No
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

### REASONS FOR FINDINGS

#### *Issues No. 2 and 3 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that her services were illegally and unjustifiably terminated by the respondent in September, 2004 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in the year 1994 and had continuously worked as such till the year 2004. It was also his claim that notional breaks were given to her by the department from the year 1980 upto the year 2004 so that she could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to her were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned Assistant District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that she had completed working for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, she will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that she had worked for 160 days in preceding twelve calendar months prior to her alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of her alleged

termination, which as per the reference took place in the month of September, 2004. No mandays chart of the petitioner is there on the file to establish that she had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of her alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25- F of the Act are not attracted in this case.

15. The principle of “last come first go” is envisaged under Section 25-G of the Act. The said Section provides:

*“25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.*

16. The petitioner in paragraph 4 of the statement of claim maintained that at the time her services were terminated, the workmen, namely, Shri Jai Dass and twenty two others, who were junior to him, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to her were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. It is not the case of the petitioner that after her alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

*Issue No. 4 :*

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

*Issue No. 1 :*

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another.* (1999) 6 SCC 82, it has been observed by the Hon’ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*



21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

*Relief:*

22. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of August, 2019.

Sd/-  
**(YOGESH JASWAL),**  
*Presiding Judge,*  
*Labour Court-cum-Industrial,*  
*Tribunal, Kangra at Dharamshala, H.P.*

---

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)**

Ref. No. : 537/2016

Date of Institution : 23.8.2016

Date of Decision : 08.08.2019

Shri Roshan Lal s/o Shri Bheem Chand, r/o Village Kawa, P.O. Killar Tehsil Pangi,  
District Chamba, H.P. . . . *Petitioner.*

*Versus*

The Executive Engineer, HPPWD Division Killar, Tehsil Pangi, District Chamba, H.P.  
. . . *Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Manoj Kumar, ADA

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Roshan Lal s/o Sh. Bheem Chand, Village Kawas, P.O. Killar, Tehsil Pangi, Distt. Chamba H.P. during 11/1997 by the Executive Engineer, HPPWD Division, Killar (Pangi) District Chamba, H.P. who had worked as beldar on daily wages basis only for 185 days during the years 1996 to 1997 and has raised his industrial dispute vide demand notice dated Nil received in the Office of Labour Officer Chamba on 9/6/2015) after more than 18 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the year mentioned as above and delay of more than 18 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged beldar on muster roll basis, without any appointment letter, in the year 1995. He continuously worked with intermittent breaks upto October, 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘first come last go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of his termination, the persons junior to him were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Shri Suraj Ram, Chunku, Budhi Ram and Dev Raj. He was not given an opportunity of reemployment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1996 and who remained engaged till the year 1997. He had worked intermittently with the department and had left the job of his own sweet will, and had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per the orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of his own, there was no need of serving a notice upon him or to pay one month wages in lieu thereof. The respondent had not violated the principle of ‘last come first go’. If the petitioner had been terminated in the year 1997, he certainly would have raised an industrial dispute, but the same was raised by him before the Labour Officer only in the year 2011, *i.e.* after about 14 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in

lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages. The respondent, thus, prays for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 21.11.2018:

1. Whether termination of the services of the petitioner by the respondent during November, 1997 is/was legal and justified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Assistant District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned authorized representative for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Yes
Issue No. 2	: No
Issue No. 3	: No
Issue No. 4	: No
Relief	: Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

*Issues No. 2 and 3 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in October, 2004 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in the year 1995 and had continuously worked as such till the year 2004. It was also his claim that notional breaks were given to him by the department so that he could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned Assistant District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In R.M. Yellattv vs. Assistant Executive Engineer, (2006) 1 SCC 106, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of November, 1997. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The principle of "last come first go" is envisaged under Section 25-G of the Act. The said Section provides:

*"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

16. The petitioner in paragraph 10 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, S/Shri Suraj Ram, Chuku Ram, Budhi Ram and Dev Raj, who were junior to him, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

*Issue No. 3 :*

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

*Issue No. 4 :*

**20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:**

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

*Relief :*

22. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)**

Ref. No. : 545/2016

Date of Institution : 23.8.2016

Date of Decision : 08.08.2019

Smt. Rusli w/o Shri Gian, r/o Village Kuthal, P.O. Sach, Tehsil Pangi, District Chamba,  
H.P. . *Petitioner.*

*Versus*

The Executive Engineer, HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P.  
. *Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Manoj Kumar, ADA

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Smt. Rusli w/o Sh. Gian Chand, Village Kuthal, P.O. Sach, Tehsil Pangi, Distt. Chamba H.P. from 10/2000 by the Executive Engineer, HPPWD Division Killar (Pangi), Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 134 days during the year 1994 to 2000 and has raised her industrial dispute *vide* demand notice dated 23/8/2012 after more than 11 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as daily waged beldar on muster roll basis in the year 1994. She continuously worked with intermittent breaks upto October, 2000 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘last come first go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of her

termination, the persons junior to her were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are Shri Jai Dass and twenty two others. She was not given an opportunity of reemployment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of Constitution of India. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petitioner were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1997 and who remained engaged till the year 2000. She had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner mentioned at serial Nos. 1 to 19 & 21 and 23 in para No. 4 of the claim petition were appointed as per order of the Labour Court and at serial Nos. 20 & 22 as harness case. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2000, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2012, *i.e.* after about twelve years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages. The respondent, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 21.11.2018:

1. Whether termination of the services of the petitioner by the respondent from October, 2004 is/was legal and justified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and her evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, she had failed to lead her evidence. Since, no evidence was led on record by the petitioner, the learned Assistant District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned authorized representative for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2 : Negative

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

*Issues No.1 and 2 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that her services were illegally and unjustifiably terminated by the respondent in September, 2004 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in the year 1994 and had continuously worked as such till the year 2000. It was also her claim that fictional breaks were given to her by the department so that she could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to her were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned Assistant District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that she had completed working for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.



13. Section 25-B of the Act defines “continuous service”. In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, she will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that she had worked for 160 days in preceding twelve calendar months prior to her alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer. (2006) 1 SCC 106.** it has been laid by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon’ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of her alleged termination, which as per the reference took place in the month of October, 2000. No mandays chart of the petitioner is there on the file to establish that she had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of her alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25- F of the Act are not attracted in this case.

15. The principle of “last come first go” is envisaged under Section 25-G of the Act. The said Section provides:

*“25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.*

16. The petitioner in paragraph 4 of the statement of claim maintained that at the time her services were terminated, the workmen, namely, Shri Jai Dass and twenty two others, who were junior to him, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to her were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. It is not the case of the petitioner that after her alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

*Issue No. 3 :*

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

20. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

*Relief :*

22. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of August, 2019.

Sd/-  
**(YOGESH JASWAL),**  
*Presiding Judge,*  
*Labour Court-cum-Industrial,*  
*Tribunal, Kangra at Dharamshala, H.P.*

---

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)**

Ref. No. : 131/2016

Date of Institution : 04.3.2016

Date of Decision : 08.08.2019

Smt. Guddi Devi w/o Shri Bhagi Ram, r/o Village Findpar, P.O. Mindhal, Tehsil Pangri,  
District Chamba, H.P. . . . *Petitioner.*

*Versus*

The Executive Engineer, I.P.H./H.P.P.W.D. Division Killar Tehsil Pangri, District Chamba,  
H.P. . . . *Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Manoj Kumar, ADA

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Guddi Devi w/o Shri Bhagi Ram, r/o Village Findpar, P.O. Mindhal, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 30.1.2012 regarding her alleged illegal termination of service during November, 1999 suffers from delay and laches? If not, Whether termination of the services of Smt. Guddi Devi w/o Shri Bhagi Ram, r/o Village Findpar, P.O. Mindhal, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar Tehsil Pangi, District Chamba, H.P. during November, 1999 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as daily waged on muster roll basis, without any appointment letter, in the year 1986. She worked upto the year 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh has fixed criteria for 160 days for the purpose of continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). It is further alleged that the respondent had unlawfully terminated the services of the petitioner. It is further the case of the petitioner that she had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The respondent had not followed the principle of ‘first come last go’. The names of the juniors, who were retained in service by the respondent are S/Sh./Smt. Jeet Singh, Geeta Ram, Laxmi Devi, Baldev Singh, Parkash Chand, Tirlok Chand, Hari Ram and Ram Dei. It is further alleged that after the termination of the services of the petitioner, the respondent had appointed new/fresh hands namely S/Sh. Sham Lal and Gautam Singh. She was not given an opportunity of employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1991 and who remained engaged till the year 2003. She had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of

the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2003, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2012, *i.e.* after about 09 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for the back wages. The respondent, thus, prays for the dismissal of the claim petition.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 13.9.2018:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 30-01-2012 qua her termination of service during November, 1999 by respondent suffers from the vice of delay and laches as alleged? . . .*OPP.*
1. Whether termination of the services of petitioner by the respondent during November, 1999 is/was legal and justified as alleged? . . .*OPP.*
2. If issue No. 1 is or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and her evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, she had failed to lead her evidence. Since, no evidence was led on record by the petitioner, the learned Assistant District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned counsel for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

- |            |       |
|------------|-------|
| Issue No.1 | : No  |
| Issue No.2 | : Yes |

Issue No.3	: Negative
Issue No.4	: No
Relief	: Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

*Issues No. 2 and 3 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that her services were illegally and unjustifiably terminated by the respondent in the year 2004 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in the year 1986 and had continuously worked as such till the year 2004. It was also her claim that fictional breaks were given to her by the department so that she could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to her were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned Assistant District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that she had worked for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines "continuous service". In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, she will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that she had worked for 160 days in the preceding twelve calendar months prior to her alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of her alleged termination, which as per the reference took place in the month of November, 1999. No mandays

chart of the petitioner is there on the file to establish that she had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of her alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:

*“25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.*

16. The petitioner in paragraph 4 of the statement of claim maintained that at the time her services were terminated, the workmen, namely, S/Sh./Smt. Jeet Singh, Geeta Ram, Laxmi Devi, Baldev Singh, Parkash Chand, Tirlok Chand, Hari Ram and Ram Dei, who were junior to her, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to her were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. It was also claimed by the petitioner that new appointments had been made by the respondent. However, there is no oral or documentary evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

*Issue No. 4 :*

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

*Issue No. 1 :*

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another.* (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

*Relief:*

22. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2019.

Sd/-  
**(YOGESH JASWAL),**  
*Presiding Judge,*  
*Labour Court-cum-Industrial,*  
*Tribunal, Kangra at Dharamshala, H.P.*

---

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)**

**Ref. No. : 19/2016**

**Date of Institution : 20.1.2016**

**Date of Decision : 08.08.2019**

Smt. Naini Devi w/o Shri Puran Chand, r/o Village and Post Office Purthi, Tehsil Pangi,  
District Chamba, H.P. *. Petitioner.*

*Versus*

The Executive Engineer, I.P.H./H.P.P.W.D. Division Killar Tehsil Pangi, District Chamba,  
H.P. *. Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Manoj Kumar, ADA

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Naini Devi w/o Shri Puran Chand, r/o Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated-nil-received on 8.5.2012 regarding her alleged illegal termination of service during August, 2004 suffers from delay and laches? If not, Whether termination of the services of Smt. Naini Devi w/o Shri Puran Chand, r/o Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during August, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as daily waged on muster roll basis, without any appointment letter, in the year 1997. She worked upto August, 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh has fixed criteria for 160 days for the purpose of continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). It is further alleged that the respondent had unlawfully terminated the services of the petitioner. It is further the case of the petitioner that she had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The respondent had not followed the principle of ‘first come last go’. The names of the juniors, who were retained in service by the respondent are S/Sh./Smt. Janto Devi, Jeet Singh, Gujja Ram, Laxmi Devi and Gian Chand. It is further alleged that after the termination of the services of the petitioner, the respondent had appointed new/fresh hands namely S/Sh. Sham Lal and Gautam Singh. She was not given an opportunity of employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the year 2000 and who remained engaged till the year 2004. She had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of ‘last come first go’. If the petitioner had been terminated in the year 2004, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2012, *i.e.* after about 08 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her



termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for the back wages. The respondent, thus, prays for the dismissal of the claim petition.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 30.8.2017:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated nil qua her termination of during August, 2004 by respondent suffers from the vice of delay and laches as alleged? . . .*OPP*.
2. Whether termination of the services of petitioner by the respondent during August, 2004 is/was legal and justified as alleged? . . .*OPP*.
3. If issue No. 1 is or issue No. 2 are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and her evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, she had failed to lead her evidence. Since, no evidence was led on record by the petitioner, the learned Assistant District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned counsel for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: Yes
Issue No. 3	: Negative
Issue No. 4	: No
Relief	: Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

*Issues No. 2 and 3 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that her services were illegally and unjustifiably terminated by the respondent in August, 2004 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily wager in the year 1997 and had continuously worked as such till the year 2004. It was also her claim that fictional breaks were given to her by the department so that she could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to her were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned Assistant District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that she had worked for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, she will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that she had worked for 160 days in the preceding twelve calendar months prior to her alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of her alleged termination, which as per the reference took place in the month of August, 2004. No mandays chart of the petitioner is there on the file to establish that she had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of her alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The principle of "last come first go" is envisaged under Section 25-G of the Act. The said Section provides:

*"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

16. The petitioner in paragraph 4 of the statement of claim maintained that at the time her services were terminated, the workmen, namely, S/Sh./Smt. Janto Devi, Jeet Singh, Gujja Ram, Laxmi Devi and Gian Chand., who were junior to her, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to her were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. It was also claimed by the petitioner that new appointments had been made by the respondent. However, there is no oral or documentary evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

*Issue No. 4 :*

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

*Issue No. 1 :*

20. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

*Relief :*

22. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2019.

Sd/-  
(**YOGESH JASWAL**),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)**

Ref. No. : 66/2017

Date of Institution : 22.2.2017

Date of Decision : 08.08.2019

Shri Devi Saran s/o Shri Ram Lal, r/o Village Chask, P.O. Saichu, Tehsil Pangi,  
District Chamba, H.P. . . . *Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. . . . *Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Gaurav Sharma, Adv.

For the Respondent : Sh. Manoj Kumar, ADA

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of the services of Shri Devi Saran s/o Shri Ram Lal, r/o Village Chask, P.O. Saichu, Tehsil Pangi, District Chamba, H.P. during year, 1996 by the Executive Engineer, Killar Division H.P.P.W.D. Killar (Pangi), District Chamba, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute vide demand notice dated 28-09-2015 after delay of about 19 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period and delay of about 19 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that he was engaged as a daily waged beldar in the year 1993 and had worked upto the year 1996. The respondent had illegally terminated the services of the petitioner without any reason, ground, break or interruption *w.e.f.* 1996. The respondent had disengaged the service of the petitioner without serving any notice as required under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). The respondent had violated the principle of ‘last come first go’, as the persons junior to him had been regularized. Thereafter, the petitioner had made various requests, but without success. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. It has been denied that the services of the petitioner were engaged by the respondent as a daily waged beldar from the year 1993 upto the

year 1996. It was asserted that the petitioner had never been engaged by the respondent to do any work. The respondent, thus, pray for the dismissal of the claim.

4. Rejoinder was not filed.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 21.11.2018:

1. Whether termination of the service of petitioner by the respondent during year, 1996 is/was legal and justified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . . .*OPR.*

Relief :

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Assistant District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned authorized representative for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

*Issues No.1 and 2 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in the year 1996 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in the year 1993 and had continuously worked as such till the year 1996. It was also his claim that fictional breaks were given to him by the department so that he could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It was contended by the learned Assistant District Attorney for the respondent that the petitioner had never been engaged by the respondent so the question of completing 160 days did not arise, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had worked for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

12. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In *R.M. Yellatty vs. Assistant Executive Engineer. (2006) 1 SCC 106*, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

13. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year, 1996. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

14. The principle of "last come first go" is envisaged under Section 25-G of the Act. The said Section provides:

*"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

15. The petitioner in paragraph 4 of the statement of claim maintained that at the time his services were terminated, the workmen junior to him had been regularized as beldars by the

respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

16. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

*Issue No. 3 :*

17. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

*Issue No. 4 :*

18. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another.* (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

19. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

*Relief :*

20. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)**

Ref. No. : 429/2016

Date of Institution : 19.8.2016

Date of Decision : 08.08.2019

Smt. Gamo Devi w/o Shri Subhash Chand, r/o Village Hillour, P.O. Sahali, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Killar Division (Pangi), Tehsil Pangi, District Chamba, H.P. . *Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Manoj Kumar, ADA

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of between Smt. Gamo Devi, w/o Shri Subhash Chand, r/o Village Hillour, P.O. Sahali, Tehsil Pangi, District Chamba, H.P. during year, 2004 by the Executive Engineer, H.P.P.W.D. Killar Division (Pangi) District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas she has raised the industrial dispute vide demand notice dated 27.08.2012 after lapse of more than 8 years. If not, keeping in view delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as daily waged beldar on muster roll basis in the year, 1995. She continuously worked with intermittent breaks upto the year 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘last come first go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of her termination, the persons junior to her were retained in service by the respondent. The names of



the juniors, who were retained in service by the respondent are Shri Hukkam Chand and twenty seven others. She was not given an opportunity of reemployment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of Constitution of India. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petitioner were denied on merits. It has been denied that the services of the petitioner were engaged by the respondent as a daily waged beldar on muster roll basis during the year 1995 and that she had continuously worked with intermittent breaks upto the year 2004. It was asserted that the petitioner had never been engaged by the respondent to do any work. The respondent, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 21.11.2018:

1. Whether termination of the services of the petitioner by the respondent during year, 2004 is/was legal and justified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . . .*OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and her evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, she had failed to lead her evidence. Since, no evidence was led on record by the petitioner, the learned Assistant District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned counsel for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Yes

Issue No.2 : No

---

Issue No.3	: No
Issue No.4	: No
Relief	: Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

#### *Issue No.1 and 2 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that her services were illegally and unjustifiably terminated by the respondent in the year 2004 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis in the year 1995 and had continuously worked as such till the year 2004. It was also her claim that fictional breaks were given to her by the department so that she could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to her were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It was contended by the learned Assistant District Attorney for the respondent that the petitioner had never been engaged by the respondent so the question of completing 160 days did not arise, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that she had completed working for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

12. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, she will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that she had worked for 160 days in preceding twelve calendar months prior to her alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatt vs. Assistant Executive Engineer. (2006) 1 SCC 106.** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

13. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of her alleged termination, which as per the reference took place in the year 2004. No mandays chart of the petitioner is there on the file to establish that she had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of her alleged termination, as

envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

14. The principle of “last come first go” is envisaged under Section 25-G of the Act. The said Section provides:

*“25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.*

15. The petitioner in paragraph 3 of the statement of claim maintained that at the time her services were terminated, the workmen, namely, Shri Hukkam Chand and twenty seven others who were junior to her, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to her were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

16. It is not the case of the petitioner that after her alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

17. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

*Issue No. 3 :*

18. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

*Issue No. 4 :*

19. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon’ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

*Relief :*

21. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of August, 2019.

Sd/-  
**(YOGESH JASWAL),**  
*Presiding Judge,*  
*Labour Court-cum-Industrial,*  
*Tribunal, Kangra at Dharamshala, H.P.*

---

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)**

**Ref. No. : 79/2016**  
**Date of Institution : 20.2.2016**  
**Date of Decision : 08.08.2019**

Smt. Dev Dei w/o Shri Shankar Dev, r/o Village Seri, P.O. Kironi Kothi, Tehsil Pangi, District Chamba, H.P. *. .Petitioner.*

*Versus*

The Executive Engineer, I.P.H./H.P.P.W.D. Division Killar Tehsil Pangi, District Chamba, H.P. *. .Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Manoj Kumar, ADA

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Dev Dei w/o Shri Shankar Dev, r/o Village Seri, P.O. Kironi Kothi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 2.6.2012 regarding her alleged illegal termination

of service during September, 2004 suffers from delay and laches? If not, Whether termination of the services of Smt. Dev Dei w/o Shri Shankar Dev, r/o Village Seri, P.O. Kironi Kothi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as a daily wager on muster roll basis, without any appointment letter, in the year 1997. She worked upto September, 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh has fixed criteria for 160 days for the purpose of continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short). It is further alleged that the respondent had unlawfully terminated the services of the petitioner. She had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The respondent had not followed the principle of 'first come last go'. The names of the juniors who were retained in service by the respondent are S/Sh./Smt. Jai Dass, Tek Chand, Baldev, Amar Nath, Balak Chand, Shyam Lal, Prakash Chand, Sucheta Ram, Trilok Chand, Hari w/o Sh. Nanak Chand, Hari Ram, Ram Dei and Budhi Ram. After the termination of the services of the petitioner the respondent had appointed new/fresh hands namely S/Sh. Sham Lal and Gautam Singh. She was not given an opportunity of employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1998 and who remained engaged till the year 2004. She had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per the orders of the Labour Court. No other workman junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2004, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2012, *i.e.* after about 08 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for the back wages. The respondent, thus, prays for the dismissal of the claim petition.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 30.8.2017:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 02-06-2012 qua her termination of during Sept., 2004 by respondent suffers from the vice of delay and laches as alleged? . .*OPP.*
2. Whether termination of the services of petitioner by the respondent during Sept., 2004 is/was illegal and unjustified as alleged? . .*OPP.*
3. If issue No. 1 is or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and her evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, she had failed to lead her evidence. Since, no evidence was led on record by the petitioner, the learned Assistant District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned counsel for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Negative
Issue No. 4	: No
Relief	: Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

*Issues No. 2 and 3 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that her services were illegally and unjustifiably terminated by the respondent in the year 2004 by violating the

provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in the year 1997 and had continuously worked as such upto September, 2004. It was also her claim that fictional breaks were given to her by the department so that she could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to her were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned Assistant District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that she had worked for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, she will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that she had worked for 160 days in the preceding twelve calendar months prior to her alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously for a period of 160 days in a block of twelve calendar months anterior to the date of her alleged termination, which as per the reference took place in the month of September, 2004. No mandays chart of the petitioner is there on the file to establish that she had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of her alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The principle of "last come first go" is envisaged under Section 25-G of the Act. The said Section provides:

*"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

16. The petitioner in paragraph 4 of the statement of claim maintained that at the time her services were terminated, the workmen, namely, S/Sh./Smt. Jai Dass, Tek Chand, Baldev, Amar Nath, Balak Chand, Shyam Lal, Prakash Chand, Sucheta Ram, Trilok Chand, Hari w/o Sh. Nanak Chand, Hari Ram, Ram Dei and Budhi Ram, who were junior to her, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to her were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. It was also claimed by the petitioner that new appointments had been made by the respondent. However, there is no oral or documentary evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

*Issue No. 4 :*

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

*Issue No. 1 :*

20. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

*Relief :*

22. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.



Announced in the open Court today this 08th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)**

Ref. No. : 341/2016

Date of Institution : 26.5.2016

Date of Decision : 08.08.2019

Shri Nanak Singh s/o Shri Param Dass, r/o Village Findpar, P.O. Mindal, Tehsil Pangi,  
District Chamba, H.P. . . .Petitioner.

*Versus*

The Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Killar, District Chamba,  
H.P. . . .Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Manoj Kumar, ADA

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Nanak Chand s/o Shri Param Dass, r/o Vill. Findpar, P.O. Mindal, Tehsil Pangi, District Chamba, H.P. during 09/2004 by the Executive Engineer, H.P.P.W.D. Division Killar, District Chamba, H.P., who has worked as beldar on daily wages basis and has raised his industrial dispute after 7 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 76, 15, 24, 5, 100, 81, 26, 45, 140, 106 and 63 days during years 1991, 1992, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003 and 2004 respectively and delay of 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged beldar on muster roll basis, without any appointment letter, in the month

of May, 1991. He worked upto September, 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh has fixed criteria for 160 days for the purpose of continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short). It is further alleged that the respondent had unlawfully terminated the services of the petitioner. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The respondent had not followed the principle of 'first come last go'. The names of the juniors, who were retained in service by the respondent are S/Sh./Smt. Jeet Singh, Geeta Ram, Laxmi Devi, Baldev, Parkash Chand, Tirlok Chand, Hari Ram and Ram Dei. It is further alleged that after the termination of the services of the petitioner, the respondent had appointed new/fresh hands namely S/Sh. Sohan Lal and Gautam Singh. He was not given an opportunity of employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage him, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1991 and who remained engaged till the year 2004. He had worked intermittently with the department and had left the job of his own sweet will, and had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of his own, there was no need of serving a notice upon him or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2004, he certainly would have raised an industrial dispute, but the same was raised by him before the Labour Officer only in the year 2012, *i.e.* after about 08 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for the back wages. The respondent, thus, prays for the dismissal of the claim petition.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 09.3.2018:

1. Whether termination of the services of petitioner by the respondent during Sept., 2004 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*

3. Whether the claim petition is not maintainable in the present form as alleged? . . . *OPR*.

4. Whether the claim petition is bad on account of delay and laches as alleged? . . . *OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Assistant District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned counsel for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : No

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Relief : Claim petition dismissed *vide* operative portion of the Award.

### REASONS FOR FINDINGS

#### Issues No. 1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in September, 2004 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in the year 1991 and had continuously worked as such till the year 2004. It was also his claim that fictional breaks were given to him by the department so that he could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned Assistant District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had worked for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines “continuous service”. In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon’ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of September, 2004. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:

*“25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.*

16. The petitioner in paragraph 4 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, S/Sh./Smt. Jeet Singh, Geeta Ram, Laxmi Devi, Baldev, Parkash Chand, Tirlok Chand, Hari Ram and Ram Dei, who were junior to him, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. It was also claimed by the petitioner that new appointments had been made by the respondent. However, there is no oral or documentary evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3 :

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

**Relief :**

22. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2019.

Sd/-  
(**YOGESH JASWAL**),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

\_\_\_\_\_  
**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)**

Ref. No. : 595/2015  
Date of Institution : 19.12.2015  
Date of Decision : 08.08.2019

Shri Parkash Chand s/o Shri Devi Dass, r/o Village Findpar, P.O. Mindal, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

*Versus*

The Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. . *Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Manoj Kumar, ADA

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Parkash Chand s/o Shri Devi Dass, r/o Village Findpar, P.O. Mindhal, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi) District Chamba, H.P. *vide* demand notice dated 02-06-2012 regarding his alleged illegal termination of services during September, 2004 suffers from delay and laches? If not, Whether termination of services of Shri Parkash Chand s/o Shri Devi Dass, r/o Village Findpar, P.O. Mindhal, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi) District Chamba, H.P. during September, 2004, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged beldar on muster roll basis, without any appointment letter, in the year 1996. He worked upto September, 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh has fixed criteria for 160 days for the purpose of continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). It is further alleged that the respondent had unlawfully terminated the services of the petitioner. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The respondent had not followed the principle of ‘first come last go’. The names of the juniors, who were retained in service by the respondent are S/Sh./Smt. Jeet Singh, Geeta Ram, Laxmi Devi, Baldev, Parkash Chand, Tirlok Chand, Hari Ram and Ram Dei. It is further alleged that after the termination of the services of the petitioner, the respondent had appointed new/fresh hands namely S/Sh. Sham Lal and Gautam Singh. He was not given an opportunity of employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage him, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1996 and who remained engaged till the year 2004. He had worked intermittently with the department and had left the job of his own sweet will, and had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of his own, there was no need of serving a notice upon him or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2004, he certainly would have raised an industrial dispute, but the same was raised by him before the Labour Officer only in the year 2011, *i.e.* after about 07 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for the back wages. The respondent, thus, prays for the dismissal of the claim petition.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 14.6.2018:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 02-06-2012 qua his termination of service during Sept., 2004 by respondent suffers from the vice of delay and laches as alleged? . . .*OPP.*
2. Whether termination of the services of petitioner by the respondent during Sept., 2004 is/was legal and justified as alleged? . . .*OPP.*
3. If issue No. 1 is or issue No. 2 are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Assistant District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned counsel for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : Negative

Issue No. 4 : No

Relief : Claim petition dismissed *vide* operative portion of the Award.

### REASONS FOR FINDINGS

*Issues No. 2 and 3 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in September, 2004 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in the year 1996 and had continuously worked as such till the year 2004. It was also his claim that fictional breaks were given to him by the department so that he could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned Assistant District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had worked for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba



District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty vs. Assistant Executive Engineer. (2006) 1 SCC 106***, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of September, 2004. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25- F of the Act are not attracted in this case.

15. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

*"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

16. The petitioner in paragraph 4 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, S/Sh./Smt. Jeet Singh, Geeta Ram, Laxmi Devi, Baldev, Parkash Chand, Tirlok Chand, Hari Ram and Ram Dei, who were junior to him, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. It was also claimed by the petitioner that new appointments had been made by the respondent. However, there is no oral or documentary evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

*Issue No. 4 :*

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

*Issue No. 1 :*

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82*, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

*Relief :*

22. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)

Ref. No. : 458/2016

Date of Institution : 20.8.2016

Date of Decision : 08.08.2019

Smt. Bhutti Devi w/o Shri Gobind Chand, r/o Village Rei, P.O. Udeen, Tehsil Pangi,  
District Chamba, H.P. . . .Petitioner.

*Versus*

The Executive Engineer, HPPWD Division Killar, Tehsil Pangi, District Chamba, H.P.  
. . .Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Manoj Kumar, ADA

### AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Smt. Bhutti Devi w/o Sh. Gobind Chand, Village Rei, Tehsil Pangi, Distt. Chamba, H.P. from September 2004 by the Executive Engineer, HPPWD Division, Killar (Pangi) Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 370 days during the year July 2001 to September 2004 and has raised her industrial dispute *vide* demand notice dated 2-7-2015 after more than 11 years allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the year mentioned as above and delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as daily waged beldar on muster roll basis, without any appointment letter, in the year 1997. She worked upto the year 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh has fixed criteria for 160 days for the purpose of continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). It is further alleged that the respondent had unlawfully terminated the services of the petitioner. It is further the case of the petitioner that she had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The respondent had not followed the principle of ‘first come last go’. The names of the juniors, who were retained in service by the respondent are S/Sh./Smt. Jeet Singh, Geeta Ram, Laxmi Devi, Baldev, Parkash Chand, Tirlok Chand, Hari Ram and Ram Dei. It is further alleged that after the termination of the services of the petitioner, the respondent had appointed new/fresh hands namely S/Sh./Smt. Dev Raj, Ram Singh s/o Sh. Bir Chand, Ram Singh s/o Sh. Prem Lal, Gautam and Mohinder Singh. She was not given an opportunity of employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the year 2001 and who remained engaged till the year 2004. She had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding

the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2004, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2011, *i.e.* after about 07 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for the back wages. The respondent, thus, prays for the dismissal of the claim petition.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 9.3.2018:

1. Whether termination of the services of petitioner by the respondent during Sept., 2004 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and her evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, she had failed to lead her evidence. Since, no evidence was led on record by the petitioner, the learned Assistant District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned counsel for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

- |            |      |
|------------|------|
| Issue No.1 | : No |
| Issue No.2 | : No |
| Issue No.3 | : No |
| Issue No.4 | : No |

Relief

: Claim petition dismissed *vide* operative portion of the Award.

### REASONS FOR FINDINGS

#### *Issues No.1 and 2 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that her services were illegally and unjustifiably terminated by the respondent in the year 2004 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in the year 1997 and had continuously worked as such till the year 2004. It was also her claim that fictional breaks were given to her by the department so that she could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to her were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned Assistant District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that she had completed working for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, she will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that she had worked for 160 days in the preceding twelve calendar months prior to her alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of her alleged termination, which as per the reference took place in the month of September, 2004. No mandays chart of the petitioner is there on the file to establish that she had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of her alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:

*“25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.*

16. The petitioner in paragraph 4 of the statement of claim maintained that at the time her services were terminated, the workmen, namely, S/Sh./Smt. Jeet Singh, Geeta Ram, Laxmi Devi, Baldev, Parkash Chand, Tirlok Chand, Hari Ram and Ram Dei, who were junior to her, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to her were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. It was also claimed by the petitioner that new appointments had been made by the respondent. However, there is no oral or documentary evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

*Issue No. 3 :*

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

*Issue No. 4 :*

20. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon’ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

*Relief :*

22. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

---

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)**

Ref No. : 442/2015  
Date of Institution : 29.10.2015  
Date of Decision : 08.08.2019

Shri Kaka Ram s/o Shri Ram Charan, r/o Village Ajog, P.O. Purthi, Tehsil Pangi,  
District Chamba, H.P. . *Petitioner.*

*Versus*

The Divisional Forest Officer, Pangi Forest Division, Killar District Chamba, H.P.  
. *Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Vijay Kaundal, Adv.  
For the Respondent : Sh. Manoj Kumar, ADA

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Kaka Ram s/o Shri Ram Charan, r/o Village Ajog, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. during April, 2003 to year, 2009 and finally during year, 2009 by the Divisional Forest Officer, Pangi Forest Division, Killar, District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back

wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as a daily wagger on muster roll basis in the year 2002 and had worked under the Range Officer Killar. No appointment letter, casual/attendance card were issued to him at the time of his appointment by the department. Fictional breaks were given him from time to time so that 160 days could not be completed in each calendar year. His services were finally terminated in the year 2009. No show cause notice had been issued nor any inquiry conducted against the petitioner. He was also not paid one month's pay in lieu of the notice period and the retrenchment compensation. The persons working with him were continuously engaged, without any breaks. Even persons junior to him were engaged continuously. New/fresh hands were engaged. S/Shri Dharam Chand, Mehar Chand, Ramesh Kumar and Man Singh etc., who had been working with him, have been regularized by the department *w.e.f.* October, 2007. The persons who were engaged by the department in the year 1996, were regularized *w.e.f.* January, 2008. The petitioner is also entitled for the regularization of his services after the completion of eight years of continuous service or from the date his juniors were regularized. Fictional breaks which were given to him from the year 2002 upto the year 2009 and his final termination in the year 2009 are illegal, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner had been engaged on daily rated basis *w.e.f.* 2003 in Purthi Range of Pangi Forest Division on muster roll and not in Killar Range. He had worked intermittently with the department upto the year 2009 and had left the job of his own sweet will. Neither fictional breaks had been given to the petitioner, nor he had been finally terminated by the respondent. The forest related works are seasonal and time bound in nature. The petitioner had worked with the respondent/department as per his convenience and had never completed 160 days in any calendar year. The principle of 'last come first go' had not been violated, as no juniors had been retained or engaged by the respondent. Only those daily wagers were regularized by the department, who had fulfilled the criteria of continuity. The petitioner could not be regularized, as he had not completed seven years of continuous service, with a minimum of 160 days in each calendar year. S/Shri Dhyam Chand, Mehar Chand, Ramesh Kumar and Man Singh, all were senior to the petitioner. The petitioner was gainfully employed, being an agriculturist. Hence, it was prayed that the claim petition be dismissed.

4. Rejoinder denying the contents of the reply and affirming those of the statement of claim was filed.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 04.10.2018:

1. Whether time to time termination of service of petitioner by the respondent *w.e.f.* April, 2003 to 2009 is/was illegal and unjustified as alleged? . . .*OPP.*
2. Whether service of petitioner finally terminated by the respondent during year, 2009 is/was illegal and unjustified as alleged? . . .*OPP.*
3. Whether the claim petition is not maintainable as alleged? . . .*OPR.*



4. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged? . . . OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Assistant District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned counsel for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Negative

Issue No. 2 : Negative

Issue No. 3 : Not pressed

Issue No. 4 : No

Relief : Claim petition dismissed *vide* operative portion of the Award.

### REASONS FOR FINDINGS

#### Issues No. 1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The version of the petitioner is that from the date/month of his initial engagement to the year 2009, artificial/fictional breaks in service were provided to him by the respondent. His services were wrongly and illegally terminated by the respondent in the year 2009.

11. While denying the said facts, the respondent has pleaded that the petitioner had been engaged on daily rated basis *w.e.f.* the year 2003. He used to work intermittently as per his own sweet will and convenience. No intentional breaks in service were provided to the petitioner at any point of time. In the year 2009, the petitioner had stopped reporting for duty of his own accord and free volition. His services were never finally terminated as alleged.

12. Firstly, I proceed to decide as to whether fictional breaks in service were given to the petitioner by the respondent as alleged or not?

13. No ocular evidence in this regard has been led on record by the petitioner. He also failed to place and exhibit on record his mandays chart to show that artificial/fictional breaks in service were provided to him by the respondent.

14. Further, if intentional breaks in service were provided to the petitioner by the respondent time and again as alleged, then why he did not agitate the said fact earlier or at the time of receipt of payments for the working days actually put in by him. The fact that the petitioner remained tight lipped and complacent about his right for more than four years as well as received the payments without any protest speaks volumes about the truthfulness and veracity of his claim. To my mind, a false plea of intentional breaks had been put forth by the petitioner so as to derive the benefits of a regular employee with the malafide intention and ulterior motive. No artificial/fictional breaks were given to the petitioner by the respondent during the course of employment.

15. Now comes the question as to whether in the year 2009 the services of the petitioner were finally terminated by the respondent (as alleged) or not?

16. In the reply, the respondent has specifically pleaded that in the year 2009 the petitioner had willingly left the job and had never reported back for duty. It was also the stand taken by the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had worked for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent, as contained in Section 25-F of the Act were not complied with.

17. Section 25-B of the Act defines “continuous service”. In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellattv vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been laid by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

18. Applying the principles laid down in the above case by the Hon’ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period of 160 days in a block of twelve calendar months anterior to the date of his alleged final termination, which as per the reference took place in the year 2009. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

19. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:

*“25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.*

20. The petitioner in paragraph 3 of the statement of claim maintained that at the time his services were terminated, the workmen, who were junior to him, were retained in service

continuously without any breaks by the respondent. This averment has not been established, as no seniority list of daily waged category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

21. It was also claimed by the petitioner that new appointments had been made by the respondent. However, there is no oral or documentary evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

22. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

*Issue No. 3 :*

23. Not pressed.

*Issue No. 4 :*

24. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

25. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

*Relief :*

26. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 313/2016

Date of Institution : 12.5.2016

Date of Decision : 13.08.2019

Shri Sohan Lal s/o Shri Dila Ram, r/o Village Bali Dhar, P.O. Thunag, Tehsil Thunag, District Mandi, H.P. . *Petitioner.*

*Versus*

The Executive Engineer, I&PH Division, Sunder Nagar, District Mandi, H.P. . *Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Smt. Jasvinder Kaur Batra, Adv.

For the Respondent : Sh. Sanjeev Kumar Lakha, ADA

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Mr. Sohan Lal s/o Shri Dila Ram, r/o Village Bali Dhar, P.O. Thunag, Tehsil Thunag, District Mandi, H.P. during Novemebr, 1995 by the Executive Engineer, I.&P.H. Division, Sunder Nagar, District Mandi, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 13 years *vide* demand notice dated-nil-received on 06.03.2009, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 13 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that his services were engaged as a daily waged beldar by the respondent in March, 1986 in Sub Division, Thunag. He worked as such upto 30.11.1995, when his services were terminated by the respondent without giving any notice and paying the compensation. He had completed 240 days of work in a block of twelve calendar months preceding the date of his termination. The principle of ‘last come first go’ was not followed as persons junior to him, namely, S/Sh. Kishori Lal, Purshotam, Roop Lal, Tara Chand, Param Dev, Shiv Lal, Rom Chand and Lal Singh are serving the respondent/department. Even new/fresh hands have been engaged by the respondent after his (petitioner’s) termination. He had approached the respondent time and again and had been assured for re-engagement, but in vain. The act and conduct of the respondent is illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. Reply was filed taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. However, it was asserted that the petitioner had been engaged as a daily waged beldar *w.e.f.* 1.3.1986 under IPH Sub Division Thunag and had worked as such intermittently upto November, 1995. He thereafter had left the job of his own. He had not completed 240 days of work in a block of twelve calendar months, as claimed. It was specifically denied that the petitioner had requested the respondent to re-engage him and that he had been given assurance of re-engagement. No junior to the petitioner had been retained. S/Shri Kishori Lal, Purshotam, Roop Lal, Tara Chand, Param Dev, Shiv Lal, Rom Chand and Lal Singh had been re-engaged as per the orders of the Court. No new/fresh hands have been engaged. Since the petitioner had abandoned the job of his own, no notice was required to be served upon him. No provisions of the Act have been violated. The petitioner was not given any assurance of re-employment. He (petitioner) has raked up the industrial dispute at a belated stage. It has resulted in the fading of the dispute. The petitioner is gainfully employed as an agriculturist. He is not entitled to any relief. The respondent, thus, prays for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 3.5.2018:

1. Whether termination of the services of petitioner by the respondent during November, 1995 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on the ground of delay and laches as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Sohan Lal appeared as PW1 and tendered his statement by way of affidavit Ex.PW1/A. Shri Anil Verma (respondent) appeared as RW1 and tendered his statement by way of affidavit Ex. RW1/A, copies of mandays charts of Shri Lal Singh and the petitioner as Ex. RW1/B and Ex.RW1/C, copy of Award as Ex.RW1/D and copy of order of the Hon'ble High Court as Ex.RW1/E.

7. Arguments of the learned counsel for the petitioner and Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Partly yes

Issue No. 2 : Lump sum compensation of `50,000/-

Issue No. 3 : Not pressed

Issue No. 4 : Negative

Relief. : Petition is partly allowed awarding lump sum compensation of `50,000/- as per the operative part of the award.

### REASONS FOR FINDINGS

*Issues No.1, 2 and 4 :*

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Sohan Lal (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he was engaged by the respondent in the year 1986. He denied that he had worked intermittently upto November, 1995. Further, he denied that he had not worked for 240 days or more in any year. He also denied that no breaks had ever been given to him by the department and that he himself had abandoned the work after November, 1995. He admitted that S/Shri Rom Chand, Lal Singh, Shiv Lal, Param Dev, Tara Chand, Roop Lal, Purshotam and Kishori Lal had left the work in the year 2000. Volunteered that, S/Shri Rom Chand and Lal Singh, who are juniors to him, are still working with the department. He feigned ignorance that they had been re-engaged as per the orders of the Court. He admitted that thereafter no junior had been kept at work by the department. He specifically denied that since November, 1995 upto November, 2009 he had never approached the department for being re-engaged. Self stated that he had moved an application for his re-engagement, but it was not responded to by the department. He denied that no such application had been given by him. He owns land, which he cultivates. He also does the days' drudgery privately. He denied that he is giving a phoney statement.

11. Conversely, Shri Anil Verma, Executive Engineer, I&PH Division, Sunder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by respondent.

In the cross-examination, he admitted that the petitioner was engaged in March, 1986 in Sub Division Thunag. He denied that the petitioner had been removed from work on 30.11.1995. Volunteered that, he himself had left the job. He also denied that the petitioner had completed 240 days of work. He admitted that no notice of re-engagement was issued to the petitioner. Self stated that it was not given as the petitioner had not completed 240 days. He admitted that no compensation was paid to the petitioner. He specifically denied that new/fresh hands had been engaged by the department. Volunteered that, the workers had been re-engaged as per the orders of the Court. He admitted that Shri Lal Singh and Shri Rom Chand had been engaged at work by the department after the petitioner. He clearly denied that the petitioner had been wrongly and illegally removed from service by the department.

12. Ex.RW1/B is the mandays chart relating to Shri Lal Singh.

13. Ex.RW1/C is the copy of mandays chart pertaining to the petitioner.

14. Ex. RW1/D is the copy of Award dated 10.7.2012 passed in Reference No.216/2010.

15. Ex. RW1/E is the copy of order dated 24th March, 2014 passed by the Hon'ble High Court of H.P. in CWP No.5579/2013-H.

16. The engagement of the petitioner as a daily waged beldar on 1.3.1986 is not in dispute. The respondent as per the pleadings and ocular evidence clearly admitted that the petitioner had been engaged as a daily waged beldar on 1.3.1986. It is an admitted fact of the parties that the petitioner had worked with the respondent upto 30.11.1995. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that he had orally been terminated by the respondent, whereas the stand taken by the respondent is that after 30.11.1995 the petitioner had left the job of his own.

17. It is well known that the plea of abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Anil Verma (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. No notices have been placed and exhibited on record by the respondent to show that the petitioner had been called upon by the respondent to resume the duties after he allegedly left the same. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri Anil Verma (RW1) clearly admitted that no notice had been given to the petitioner to resume his duties. Faced with the situation, it was contended by the learned Assistant District Attorney for the respondent that it was not required of the respondent to proceed against the workman by way of a domestic inquiry. True it is that the petitioner, a daily wager, was not amenable to the provisions of CCS, (CCA) Rules and as such a domestic inquiry as stipulated therein was not strictly required to be initiated. Nonetheless, absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence, of any such '*animus*' on the part of the petitioner, is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent /employer is not established. So, the claim of the petitioner that his services were orally terminated by the respondent *w.e.f.* 30.11.1995 has to be accepted as correct on the balance of probability.

18. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my mind, is in the negative in view of the material on record.

19. Though, the petitioner in his statement of claim as well as his affidavit Ex.PW1/A claimed that he had completed more than 240 days in the preceding twelve calendar months, but this fact is not supported by the mandays chart, copy of which is placed on record as Ex.RW1/C. It unfolds that the petitioner did not complete 240 days of work in a block of twelve calendar months preceding the date of his termination *i.e.* 30.11.1995, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

20. There is no denial of the fact that in Reference No. 216/2010 titled as *Shri Lal Singh vs. Executive Engineer, I&PH Division, Sunder Nagar* was decided by this Court on 10.7.2012. Certified copy of the Award stands placed on record by the respondent as Ex.RW1/D. While deciding the said reference, it was held by this Court that the respondent had failed to follow the principle 'last come first go' and that new/fresh hands had also been engaged. So, there had been violation of the provisions of Sections 25-G and 25-H of the Act by the respondent. If the services of the petitioner were disengaged, then why new/fresh hands were employed and persons junior to him were re-engaged? The plea taken by the respondent of abandonment stands already negated by me above. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

21. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

22. While testifying in the Court as PW1, the petitioner has given his age as 56 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns land, which he cultivates. It is also admitted by him that he has also been doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

23. The learned Assistant District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82*, wherein it was inter-alia held:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

24. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as *Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)* will also be advantageous on this aspect of the matter.

25. In case titled as *Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh* reported in *2013 (136) FLR 893 (SC)*, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas



his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, *in case titled as Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651, by relying upon the cases of Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177 and District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)*, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as *State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791*, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all had worked in a span of about four years for only 450 days and had not completed 240 days in any year. His services were disengaged in November, 1995. He had worked as a non-skilled worker and had raised the industrial dispute by issuance of demand notice after more than *thirteen years i.e.* demand notice was given in March, 2009. He while deposing in the Court as PW1 on 3.12.2018 had given his age as 56 years. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

26. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹50,000/- (Rupees fifty thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue No. 4 is answered in the negative and decided against the respondent .

*Issue No. 3 :*

27. Not pressed.

*Relief :*

28. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of ₹50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 252/2016

Date of Institution : 03.5.2016

Date of Decision : 13.08.2019

Shri Ganga Ram s/o Shri Narotam Ram, r/o Village Khanayari, P.O. Kandha, Tehsil Thunag, District Mandi, H.P. . *Petitioner.*

*Versus*

The Executive Engineer, I&PH Division, Sunder Nagar, District Mandi, H.P. . *Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Smt. Jasvinder Kaur Batra, Adv.

For the Respondent : Sh. Sanjeev Kumar Lakha, ADA

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Ganga Ram s/o Shri Narotam Ram, r/o Village Khanayari, P.O. Kandha, Tehsil Thunag, District Mandi, H.P. during November, 2000 by the Executive Engineer, I&P.H. Division, Sunder Nagar, District Mandi, H.P., who had worked as beldar on daily wages for 211 days during year, 2000 and has raised his industrial dispute after more than 7 years vide demand notice dated 23.01.2008, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 211 days during year, 2000 and delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that his services were engaged as a daily waged beldar by the respondent in November, 1998 in Sub Division, Thunag. He worked as such upto 15.11.2000, when his services were terminated by the respondent without giving any notice and paying the compensation. He had completed 240 days of

work in a block of twelve calendar months preceding the date of his termination. The principle of 'last come first go' was not followed as persons junior to him, namely, S/Sh. Param Dev, Shiv Lal, Rom Chand and Lal Singh are serving the respondent/department. Even new/fresh hands have been engaged by the respondent after his (petitioner's) termination. He had approached the respondent time and again and had been assured for re-engagement, but in vain. The act and conduct of the respondent is illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short). The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. Reply was filed taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. However, it was asserted that the petitioner had been engaged as a daily waged beldar *w.e.f.* 6.1.2000 under IPH Sub Division Thunag and had worked as such intermittently upto November, 2000. He thereafter had left the job of his own. He had not completed 240 days of work in a block of twelve calendar months, as claimed. It was specifically denied that the petitioner had requested the respondent to re-engage him and that he had been given assurance of re-engagement. No junior to the petitioner had been retained. S/Shri Param Dev, Shiv Lal, Rom Chand and Lal Singh had been re-engaged as per the orders of the Court. No new/fresh hands have been engaged. Since the petitioner had abandoned the job of his own, no notice was required to be served upon him. No provisions of the Act have been violated. The petitioner was not given any assurance of re-employment. He (petitioner) has raked up the industrial dispute at a belated stage. It has resulted in the fading of the dispute. The petitioner is gainfully employed as an agriculturist. He is not entitled to any relief. The respondent, thus, prays for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 3.5.2018:

1. Whether termination of the services of petitioner by the respondent during November, 2000 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on the ground of delay and laches as alleged? . . .*OPR.*

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Ganga Ram appeared as PW1 and tendered his statement by way of affidavit Ex.PW1/A. Shri Anil Verma (respondent) appeared as RW1 and tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of Shri Lal Singh as Ex. RW1/B, copy of Award dated 10.7.2012 as Ex.RW1/C and copy of order of the Hon'ble High Court as Ex.RW1/D.

7. Arguments of the learned counsel for the petitioner and Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Partly yes

Issue No. 2 : Lump sum compensation of ` 25,000/-

Issue No. 3 : Not pressed

Issue No. 4 : Negative

Relief. : Petition is partly allowed awarding lump sum compensation of ` 25,000/- as per the operative part of the award.

### REASONS FOR FINDINGS

*Issues No.1, 2 and 4 :*

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Ganga Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he was engaged by the respondent in the year 1998. He denied that he had worked intermittently upto November, 2000. Further, he denied that he had not worked for 240 days or more in any year. He also denied that no breaks had ever been given to him by the department and that he himself had abandoned the work after November, 2000. He had worked with Shri Param Dev and Shri Shiv Lal. He admitted that Shri Param Dev and Shri Shiv Lal were senior to him. He admitted that S/Shri Rom Chand and Lal Singh had left the work in the year 2000. Volunteered that, they both being juniors to him, are still working with the department. He feigned ignorance that they had been re-engaged as per the orders of the Court. He admitted that thereafter no junior had been kept at work by the department. He specifically denied that from November, 2000 upto January, 2008 he had never approached the department for being re-engaged. Self stated that he had moved an application for his re-engagement, but it was not responded to by the department. He denied that no such application had been given by him. He owns land, which he cultivates. He also does the days' drudgery privately. He denied that he is giving a phoney statement.

11. Conversely, Shri Anil Verma, Executive Engineer, I&PH Division, Sunder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by respondent.

In the cross-examination, he denied that the petitioner was engaged in the year 1998 in Sub Division Thunag. He also denied that the petitioner had been removed from work on

15.11.2000. Volunteered that, he himself had left the job. Further, he denied that the petitioner had completed 240 days of work. He admitted that no notice had been issued to the petitioner to resume his duties. Self stated that as he had not completed 240 days, so there was no need of such notice. He also admitted that no notice of termination had been issued to the petitioner. Volunteered that, it was not issued as he had not completed 240 days. Further, he admitted that no compensation had been paid to the petitioner. Self stated that he himself had abandoned the work. He specifically denied that new/fresh hands have been engaged. Self deposed that workers had been kept as per the orders of the Court. He admitted that S/Shri Param Dev and Lal Singh have worked in the department. He cannot tell without the record whether they are still serving the department or not. He denied that S/Shri Lal Singh and Rom Chand had been kept at work after the petitioner. He admitted that Shri Lal Singh was re-engaged by the department. He denied that the petitioner had been removed from service illegally.

12. Ex.RW1/B is the mandays chart relating to Shri Lal Singh.

13. Ex. RW1/C is the copy of Award dated 10.7.2012 passed in Reference No.216/2010.

14. Ex. RW1/D is the copy of order dated 24th March, 2014 passed by the Hon'ble High Court of H.P. in CWP No.5579/2013-H.

15. The engagement of the petitioner as a daily waged beldar is not in dispute. The respondent as per the pleadings and ocular evidence clearly admitted that the petitioner had been engaged as a daily waged beldar. It is an admitted fact of the parties that the petitioner had worked with the respondent upto 15.11.2000. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that he had orally been terminated by the respondent, whereas the stand taken by the respondent is that after 15.11.2000 the petitioner had left the job of his own.

16. It is well known that the plea of abandonment has to be proved like any other fact by the respondent /employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Anil Verma (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. No notices have been placed and exhibited on record by the respondent to show that the petitioner had been called upon by the respondent to resume the duties after he allegedly left the same. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri Anil Verma (RW1) clearly admitted that no notice had been given to the petitioner to resume his duties. Faced with the situation, it was contended by the learned Assistant District Attorney for the respondent that it was not required of the respondent to proceed against the workman by way of a domestic inquiry. True it is that the petitioner, a daily wager, was not amenable to the provisions of CCS, (CCA) Rules and as such a domestic inquiry as stipulated therein was not strictly required to be initiated. Nonetheless, absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence, of any such '*animus*' on the part of the petitioner, is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established. So, the claim of the petitioner that his services were orally

terminated by the respondent *w.e.f.* 15.11.2000 has to be accepted as correct on the balance of probability.

17. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my mind, is in the negative in view of the material on record.

18. Though, the petitioner in his statement of claim as well as his affidavit Ex.PW1/A claimed that he had completed more than 240 days in the preceding twelve calendar months, but this fact is not supported by any other oral or documentary evidence on record.

19. Section 25-B of the Act defines “continuous service”. In terms of Sub Section (2) of Section 25-B if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

20. Applying the principles laid down in the above case by the Hon’ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in November, 2000. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

21. There is no denial of the fact that in Reference No.216/2010 titled as Shri Lal Singh vs. Executive Engineer, I&PH Division, Sunder Nagar was decided by this Court on 10.7.2012. Certified copy of the Award stands placed on record by the respondent as Ex.RW1/C. While deciding the said reference, it was held by this Court that the respondent had failed to follow the principle ‘last come first go’ and that new/fresh hands had also been engaged. So, there had been violation of the provisions of Sections 25-G and 25-H of the Act by the respondent. If the services of the petitioner were disengaged, then why new/fresh hands were employed and persons junior to him were re-engaged? The plea taken by the respondent of abandonment stands already negated by me above. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

22. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. While testifying in the Court as PW1, the petitioner has given his age as 43 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns land, which he cultivates. It is also admitted by him that he has also been doing the days’ drudgery privately. The petitioner has failed to discharge the initial onus that during the period of

his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

24. The learned Assistant District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, wherein it was inter-alia held:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

25. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view) will also be advantageous on this aspect of the matter.

26. In case titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh reported in 2013 (136) FLR 893 (SC), it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651, by relying upon the cases of Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177 and District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC), it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that as per the reference the petitioner in all had worked for 211 days in the year 2000 and had not completed 240 days in any year. His services were disengaged in November, 2000. He had worked as a non- skilled worker and had

raised the industrial dispute by issuance of demand notice after more than **seven years** i.e. demand notice was given 23.1.2008. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

27. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ` 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue No. 4 is answered in the negative and decided against the respondent.

*Issue No. 3 :*

28. Not pressed.

*Relief :*

29. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of ` 25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of August, 2019.

Sd/-  
(**YOGESH JASWAL**),  
*Presiding Judge,*  
*Labour Court-cum-Industrial,*  
*Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 191/2016

Date of Institution : 26.3.2016

Date of Decision : 13.08.2019

Shri Kundan Lal s/o Shri Beli Ram, r/o Village Jud, Post Office and Tehsil Thunag,  
District Mandi, H.P. . *Petitioner.*



---

*Versus*

The Executive Engineer, I&PH Division, Sunder Nagar, District Mandi, H.P. . *Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Smt. Jasvinder Kaur Batra, Adv.

For the Respondent : Sh. Sanjeev Kumar Lakha, ADA

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Kundan Lal s/o Shri Beli Ram, r/o Village Jud, Post Office and Tehsil Thunag, District Mandi, H.P. *w.e.f.* 01.04.1991 by the Executive Engineer, I&P.H. Division, Sunder Nagar, District Mandi, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 20 years *vide* demand notice dated 17.08.2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 20 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that his services were engaged as a daily waged beldar by the respondent *w.e.f.* 21.6.1989 in Sub Division, Thunag. He worked as such upto 31.3.1991, when his services were terminated by the respondent without giving any notice and paying the compensation. He had completed 240 days of work in a block of twelve calendar months preceding the date of his termination. The principle of ‘last come first go’ was not followed as persons junior to him, namely, S/Sh. Kishori Lal, Purshotam, Roop Lal, Tara Chand, Param Dev, Shiv Lal, Rom Chand and Lal Singh are serving the respondent/department. Even new/fresh hands have been engaged by the respondent after his (petitioner’s) termination. He had approached the respondent time and again and had been assured for re-engagement, but in vain. The act and conduct of the respondent is illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. Reply was filed taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. However, it was asserted that the petitioner had been engaged as a daily waged beldar *w.e.f.* 21.6.1989 under IPH Sub Division Thunag and had worked as such intermittently upto March, 1991. He thereafter had left the job of his own. He had not completed 240 days of work in a block of twelve calendar months, as claimed. It was specifically denied that the petitioner had requested the respondent to re-engage him and that he had been given assurance of re-engagement. No junior to the petitioner had been retained. S/Shri Kishori Lal, Purshotam, Roop Lal, Tara Chand, Param Dev, Shiv Lal, Rom Chand and Lal Singh had been re-engaged as per the orders of the Court. No new/fresh hands have been engaged. Since the petitioner had abandoned the job of his own, no notice was required to be served upon him. No provisions of the Act have been violated. The petitioner was not given any assurance of re-employment. He (petitioner) has raked up the industrial dispute at a belated

stage. It has resulted in the fading of the dispute. The petitioner is gainfully employed as an agriculturist. He is not entitled to any relief. The respondent, thus, prays for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 3.5.2018:

1. Whether termination of the services of petitioner by the respondent *w.e.f.* 01-04-1991 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on the ground of delay and laches as alleged? . . .*OPR.*

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Kundan Lal appeared as PW1 and tendered his statement by way of affidavit Ex.PW1/A. Shri Anil Verma (respondent) appeared as RW1 and tendered his statement by way of affidavit Ex. RW1/A, copies of mandays charts of Shri Lal Singh and the petitioner as Ex. RW1/B and Ex.RW1/C, copy of Award as Ex.RW1/D and copy of order of the Hon'ble High Court as Ex.RW1/E.

7. Arguments of the learned counsel for the petitioner and Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Partly yes

Issue No. 2 : Lump sum compensation of ` 25,000/-

Issue No. 3 : Not pressed

Issue No. 4 : Negative

Relief. : Petition is partly allowed awarding lump sum compensation of `25,000/- as per the operative part of the award.

### REASONS FOR FINDINGS

*Issues No.1, 2 and 4 :*

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Kundan Lal (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he was engaged by the respondent in the year 1989. He denied that he had worked intermittently upto March, 1991. Further, he denied that he had not worked for 240 days or more in any year. He also denied that no breaks had ever been given to him by the department and that he himself had abandoned the work after March, 1991. He admitted that S/Shri Rom Chand, Lal Singh, Shiv Lal, Param Dev, Tara Chand, Roop Lal, Purshotam and Kishori Lal had left the work in the year 2000. Volunteered that, S/Shri Rom Chand and Lal Singh, who are juniors to him, are still working with the department. He feigned ignorance that they had been re-engaged as per the orders of the Court. He admitted that thereafter no junior had been kept at work by the department. He specifically denied that since March, 1991 upto August, 2011 he had never approached the department for being re-engaged. Self stated that he had moved an application for his re-engagement, but it was not responded to by the department. He denied that no such application had been given by him. He owns land, which he cultivates. He also does the days' drudgery privately. He denied that he is giving a phoney statement.

11. Conversely, Shri Anil Verma, Executive Engineer, I&PH Division, Sunder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by respondent.

In the cross-examination, he admitted that the petitioner was engaged in the year 1989 in Sub Division Thunag. He denied that the petitioner had been removed from work in March, 1991. Volunteered that, he himself had left the job. He also denied that the petitioner had completed 240 days of work. He admitted that no notice of re-engagement was issued to the petitioner. Self stated that it was not given as the petitioner had not completed 240 days. He admitted that no compensation was paid to the petitioner. He specifically denied that new/fresh hands had been engaged by the department. Volunteered that, the workers had been re-engaged as per the orders of the Court. He admitted that Shri Lal Singh and Shri Rom Chand had been engaged at work by the department after the petitioner. He clearly denied that the petitioner had been wrongly and illegally removed from service by the department.

12. Ex.RW1/B is the mandays chart relating to Shri Lal Singh.

13. Ex.RW1/C is the copy of mandays chart pertaining to the petitioner

14. Ex. RW1/D is the copy of Award dated 10.7.2012 passed in Reference No.216/2010.

15. Ex. RW1/E is the copy of order dated 24th March, 2014 passed by the Hon'ble High Court of H.P. in CWP No.5579/2013-H.

16. The engagement of the petitioner as a daily waged beldar on 21.6.1989 is not in dispute. The respondent as per the pleadings and ocular evidence clearly admitted that the petitioner had been engaged as a daily waged beldar on 21.6.1989. It is an admitted fact of the parties that the petitioner had worked with the respondent upto March, 1991. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that he had orally been terminated by the respondent, whereas the stand taken by the respondent is that after March, 1991 the petitioner had left the job of his own.

17. It is well known that the plea of abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Anil Verma (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. No notices have been placed and exhibited on record by the respondent to show that the petitioner had been called upon by the respondent to resume the duties after he allegedly left the same. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri Anil Verma (RW1) clearly admitted that no notice had been given to the petitioner to resume his duties. Faced with the situation, it was contended by the learned Assistant District Attorney for the respondent that it was not required of the respondent to proceed against the workman by way of a domestic inquiry. True it is that the petitioner, a daily wager, was not amenable to the provisions of CCS, (CCA) Rules and as such a domestic inquiry as stipulated therein was not strictly required to be initiated. Nonetheless, absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence, of any such '*animus*' on the part of the petitioner, is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent /employer is not established. So, the claim of the petitioner that his services were orally terminated by the respondent *w.e.f.* 31.3.1991 has to be accepted as correct on the balance of probability.

18. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my mind, is in the negative in view of the material on record.

19. Though, the petitioner in his statement of claim as well as his affidavit Ex.PW1/A claimed that he had completed more than 240 days in the preceding twelve calendar months, but this fact is not supported by the mandays chart, copy of which is placed on record as Ex.RW1/C. It unfolds that the petitioner did not complete 240 days of work in a block of twelve calendar months preceding the date of his termination *i.e.* 31.3.1991, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

20. There is no denial of the fact that in Reference No. 216/2010 titled as Shri Lal Singh vs. Executive Engineer, I&PH Division, Sunder Nagar was decided by this Court on 10.7.2012. Certified copy of the Award stands placed on record by the respondent as Ex.RW1/D. While deciding the said reference, it was held by this Court that the respondent had failed to follow the principle 'last come first go' and that new/fresh hands had also been engaged. So, there had been violation of the provisions of Sections 25-G and 25-H of the Act by the respondent. If the services of the petitioner were disengaged, then why new/fresh hands were employed and persons junior to him were re-engaged? The plea taken by the respondent of abandonment stands already negated by me above. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

21. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

22. While testifying in the Court as PW1, the petitioner has given his age as 46 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of

the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns land, which he cultivates. It is also admitted by him that he has also been doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

23. The learned Assistant District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, wherein it was inter-alia held:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

24. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

25. In case titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on

hand before this Court, the factors which have weighed are that the petitioner in all had worked in a span of about three years for only 326 days and had not completed 240 days in any year. His services were disengaged in March, 1991. He had worked as a non-skilled worker and had raised the industrial dispute by issuance of demand notice after more than *twenty years* i.e. demand notice was given on 17.8.2011. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

26. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹ 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue No. 4 is answered in the negative and decided against the respondent.

*Issue No. 3 :*

27. Not pressed.

*Relief :*

28. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ₹ 25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

---

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.	: 250/2016
Date of Institution	: 03.5.2016
Date of Decision	: 14.08.2019

Shri Pushap Raj s/o Shri Dev Mani, r/o Village and Post Office Bagsaid, Tehsil Thunag, District Mandi, H.P. . . *Petitioner.*

*Versus*

The Executive Engineer, I&PH Division, Sunder Nagar, District Mandi, H.P. . . *Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Smt. Jasvinder Kaur Batra, Adv.

For the Respondent : Sh. Sanjeev Kumar Lakha, ADA

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Pushap Raj s/o Shri Dev Mani, r/o Village and Post Office Bagsaid, Tehsil Thunag, District Mandi, H.P. during November, 2000 by the Executive Engineer, I.&P.H. Division, Sunder Nagar, District Mandi, H.P., who had worked as beldar on daily wages for 169 days during year, 1999 and 219 days during year, 2000 respectively and has raised his industrial dispute after more than 7 years *vide* demand notice dated 23.01.2008, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 169 days during year, 1999 and 219 days during year, 2000 respectively and delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that his services were engaged as a daily waged beldar by the respondent in November, 1998 in Sub-Division, Thunag. He worked as such upto 15.11.2000, when his services were terminated by the respondent without giving any notice and paying the compensation. He had completed 240 days of work in a block of twelve calendar months preceding the date of his termination. The principle of ‘last come first go’ was not followed as persons junior to him, namely, S/Sh. Param Dev, Shiv Lal, Rome Chand and Lal Singh are serving the respondent/department. Even new/fresh hands have been engaged by the respondent after his (petitioner’s) termination. He had approached the respondent time and again and had been assured for re-engagement, but in vain. The act and conduct of the respondent is illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. Reply was filed taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. However, it was asserted that the petitioner had been engaged as a daily waged beldar *w.e.f.* 5.2.1999 under IPH Sub Division Thunag and had worked as such intermittently upto November, 2000. He thereafter had left the job of his own. He had not completed 240 days of work in a block of twelve calendar months, as claimed. It was specifically denied that the petitioner had requested the respondent to re-engage him and that he had been given assurance of re-engagement. No junior to the petitioner had been retained. S/Shri Param Dev, Shiv Lal, Rom Chand and Lal Singh had been re-engaged as per the orders of

the Court. No new/fresh hands have been engaged. Since the petitioner had abandoned the job of his own, no notice was required to be served upon him. No provisions of the Act have been violated. The petitioner was not given any assurance of re-employment. He (petitioner) has raked up the industrial dispute at a belated stage. It has resulted in the fading of the dispute. The petitioner is gainfully employed as an agriculturist. He is not entitled to any relief. The respondent, thus, prays for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 3.5.2018:

1. Whether termination of the services of petitioner by the respondent during November, 2000 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on the ground of delay and laches as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Pushap Raj appeared as PW1 and tendered his statement by way of affidavit Ex.PW1/A. Shri Anil Verma (respondent) appeared as RW1 and tendered his statement by way of affidavit Ex. RW1/A, copies of mandays charts of Shri Lal Singh and the petitioner as Ex. RW1/B and Ex.RW1/C, copy of Award dated 10.7.2012 as Ex.RW1/D and copy of order dated 24.3.2014 of the Hon'ble High Court as Ex.RW1/E.

7. Arguments of the learned counsel for the petitioner and Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

- |             |   |
|-------------|---|
| Issue No. 1 | : Partly yes  |
| Issue No. 2 | : Lump sum compensation of ` 25,000/-   |
| Issue No. 3 | : Not pressed   |
| Issue No. 4 | : Negative  |
| Relief.     | : Petition is partly allowed awarding lump sum compensation of ` 25,000/- as per the operative part of the award. |

### REASONS FOR FINDINGS

*Issues No. 1, 2 and 4*



9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Pushap Raj (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he was engaged by the respondent in the year 1998. He denied that he had worked intermittently upto November, 2000. Further, he denied that he had not worked for 240 days or more in any year. He also denied that no breaks had ever been given to him by the department and that he himself had abandoned the work after November, 2000. He had worked with Shri Param Dev and Shri Shiv Lal. He admitted that Shri Param Dev and Shri Shiv Lal were senior to him. He admitted that S/Shri Rom Chand and Lal Singh had left the work in the year 2000. Volunteered that, they both being juniors to him, are still working in the department. He feigned ignorance that they had been re-engaged as per the orders of the Court. He admitted that thereafter no junior had been kept at work by the department. He specifically denied that since November, 2000 upto January, 2008 he had never approached the department for being re-engaged. Self stated that he had moved an application for his re-engagement, but it was not responded to by the department. He denied that no such application had been given by him. He denied that he is giving a phoney statement.

11. Conversely, Shri Anil Verma, Executive Engineer, I&PH Division, Sunder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by respondent.

In the cross-examination, he denied that the petitioner was engaged in the year 1998 in Sub-Division Thunag. He also denied that the petitioner had been removed from work on 15.11.2000. Volunteered that, he himself had left the job. Further, he denied that the petitioner had completed 240 days of work. He admitted that no notice had been issued to the petitioner to resume his duties. Self stated that as he had not completed 240 days, so there was no need of such notice. He also admitted that no notice of termination had been issued to the petitioner. Volunteered that, it was not issued as he had not completed 240 days. Further, he admitted that no compensation had been paid to the petitioner. Self stated that he himself had abandoned the work. He specifically denied that new/fresh hands have been engaged. Self deposed that workers had been kept as per the orders of the Court. He admitted that S/Shri Param Dev and Lal Singh have worked in the department. He cannot tell without the record whether they are still serving the department or not. He denied that S/Shri Lal Singh and Rom Chand had been kept at work after the petitioner. He admitted that Shri Lal Singh was re-engaged by the department. He denied that the petitioner had been removed from service illegally.

12. Ex.RW1/B is the mandays chart relating to Shri Lal Singh.

13. Ex.RW1/C is the copy of mandays chart pertaining to the petitioner

14. Ex. RW1/D is the copy of Award dated 10.7.2012 passed in Reference No.216/2010.

15. Ex. RW1/E is the copy of order dated 24th March, 2014 passed by the Hon'ble High Court of H.P. in CWP No. 5579/2013-H.

16. The engagement of the petitioner as a daily waged beldar is not in dispute. The respondent as per the pleadings and ocular evidence clearly admitted that the petitioner had been engaged as a daily waged beldar. It is an admitted fact of the parties that the petitioner had worked with the respondent upto November, 2000. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that he had orally been terminated by the respondent, whereas the stand taken by the respondent is that after November, 2000 the petitioner had left the job of his own.

17. It is well known that the plea of abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Anil Verma (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. No notices have been placed and exhibited on record by the respondent to show that the petitioner had been called upon by the respondent to resume the duties after he allegedly left the same. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri Anil Verma (RW1) clearly admitted that no notice had been given to the petitioner to resume his duties. Faced with the situation, it was contended by the learned Assistant District Attorney for the respondent that it was not required of the respondent to proceed against the workman by way of a domestic inquiry. True it is that the petitioner, a daily wager, was not amenable to the provisions of CCS, (CCA) Rules and as such a domestic inquiry as stipulated therein was not strictly required to be initiated. Nonetheless, absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence, of any such '*animus*' on the part of the petitioner, is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established. So, the claim of the petitioner that his services were orally terminated by the respondent in November, 2000 has to be accepted as correct on the balance of probability.

18. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my mind, is in the negative in view of the material on record.

19. Though, the petitioner in his statement of claim as well as his affidavit Ex.PW1/A claimed that he had completed more than 240 days in the preceding twelve calendar months, but this fact is not supported by the mandays chart, copy of which is placed on record as Ex.RW1/C. It unfolds that the petitioner did not complete 240 days of work in a block of twelve calendar months preceding the date of his termination *i.e.* November, 2000, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

20. There is no denial of the fact that in Reference No.216/2010 titled as Shri Lal Singh vs. Executive Engineer, I&PH Division, Sunder Nagar was decided by this Court on 10.7.2012. Certified copy of the Award stands placed on record by the respondent as Ex.RW1/D. While deciding the said reference, it was held by this Court that the respondent had failed to follow the principle of 'last come first go' and that new/fresh hands had also been engaged. So, there had been violation of the provisions of Sections 25-G and 25-H of the Act by the respondent. If the services of the petitioner were disengaged, then why new/fresh hands were

employed and persons junior to him were re-engaged? The plea taken by the respondent of abandonment stands already negated by me above. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

21. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

22. While testifying in the Court as PW1, the petitioner has given his age as 44 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner stated that he and his brother own one bigha of land. It is also stated by him that his name has been entered in MNREGA. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

23. The learned Assistant District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82, wherein it was *inter-alia* held:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

24. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view) will also be advantageous on this aspect of the matter.

25. In case titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh reported in 2013 (136) FLR 893 (SC), it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651, by relying upon the cases of Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177 and

**District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all had worked in a span of about two years for only 388 days and had not completed 240 days in any year. His services were disengaged in November, 2000. He had worked as a non- skilled worker and had raised the industrial dispute by issuance of demand notice after more than **seven years** i.e. demand notice was given 23.1.2008. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

26. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue no.4 is answered in the negative and decided against the respondent .

*Issue No. 3 :*

27. Not pressed.

*Relief :*

28. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ₹25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 190/2016

Date of Institution : 26.3.2016

Date of Decision : 14.08.2019

Shri Devi Chand s/o Shri Mayadhar, r/o Village Deedathach, P.O. Bagsaid, Tehsil Thunag, District Mandi, H.P. . *Petitioner.*

*Versus*

The Executive Engineer, I&PH Division, Sunder Nagar, District Mandi, H.P. . *Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Smt. Jasvinder Kaur Batra, Adv.

For the Respondent : Sh. Sanjeev Kumar Lakha, ADA

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Devi Chand s/o Shri Mayadhar, r/o Village Deedathach, P.O. Bagsaid, Tehsil Thunag, District Mandi, H.P. *w.e.f.* 01.11.1990 by the Executive Engineer, I&P.H. Division, Sunder Nagar, District Mandi, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 20 years vide demand notice dated 24.06.2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 20 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that his services were engaged as a daily waged beldar by the respondent *w.e.f.* 21.9.1988 in Sub Division, Thunag. He worked as such upto 31.10.1990, when his services were terminated by the respondent without giving any notice and paying the compensation. He had completed 240 days of work in a block of twelve calendar months preceding the date of his termination. The principle of ‘last come first go’ was not followed as persons junior to him, namely, S/Sh. Kishori Lal, Purshotam, Tara Chand, Param Dev, Shiv Lal, Rom Chand and Lal Singh are serving the respondent/department. Even new/fresh hands have been engaged by the respondent after his (petitioner’s) termination. He had approached the respondent time and again and had been assured for re-engagement, but in vain. The act and conduct of the respondent is illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. Reply was filed taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. However, it was admitted that the petitioner had been engaged as a daily waged beldar *w.e.f.* 21.9.1988 under IPH Sub Division Thunag and had worked as such intermittently upto October, 1990. He thereafter had left the job of his own. He had not completed 240 days of work in a block of twelve calendar months, as claimed. It was specifically denied that the petitioner had requested the respondent to re-engage him and that he had been given assurance of re-engagement. No junior to the petitioner had been retained. S/Shri Kishori Lal, Purshotam, Roop Lal, Tara Chand, Param Dev, Shiv Lal, Rom Chand and Lal Singh had been re-engaged as per the orders of the Court. No new/fresh hands have been engaged. Since the petitioner had abandoned the job of his own, no notice was required to be served upon him. No provisions of the Act have been violated. The petitioner was not given any assurance of re-employment. He (petitioner) has raked up the industrial dispute at a belated stage. It has resulted in the fading of the dispute. The petitioner is gainfully employed as an agriculturist. He is not entitled to any relief. The respondent, thus, prays for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 3.5.2018:

1. Whether termination of the services of petitioner by the respondent *w.e.f.* 01-11-1990 is/was illegal and unjustified as alleged? *..OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? *..OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? *..OPR.*
4. Whether the claim petition is bad on the ground of delay and laches as alleged? *..OPR.*

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Devi Chand appeared as PW1 and tendered his statement by way of affidavit Ex.PW1/A. Shri Anil Verma (respondent) appeared as RW1 and tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of Shri Lal Singh as Ex. RW1/B, copy of Award dated 10.7.2012 as Ex.RW1/C and copy of order dated 24.3.2014 of the Hon'ble High Court as Ex.RW1/D.

7. Arguments of the learned counsel for the petitioner and Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Partly yes

Issue No. 2 : Lump sum compensation of `15,000/-

Issue No. 3 : Not pressed

Issue No. 4 : Negative

Relief : Petition is partly allowed awarding lump sum compensation of ₹15,000/- as per the operative part of the award.

### REASONS FOR FINDINGS

*Issues No.1, 2 and 4 :*

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Devi Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he was engaged by the respondent in the year 1988. He denied that he had worked intermittently upto October, 1990. Further, he denied that he had not worked for 240 days or more in any year. He also denied that no breaks had ever been given to him by the department and that he himself had abandoned the work after October, 1990. He had worked with Shri Param Dev and Shri Shiv Lal. He admitted that S/Shri Rom Chand, Lal Singh, Shiv Lal, Param Dev, Tara Chand, Rup Lal, Purshotam and Kishori Lal had left the work in the year 2000. Volunteered that, S/Shri Rom Chand and Lal Singh, who are juniors to him, are still working with the department. He feigned ignorance that they had been re-engaged as per the orders of the Court. He admitted that thereafter no junior had been kept at work by the department. He specifically denied that since October, 1990 upto June, 2011 he had never approached the department for being re-engaged. Self stated that he had moved an application for his re-engagement, but it was not responded to by the department. He denied that no such application had been given by him. He owns land, which he cultivates. He also does the days' drudgery privately. He denied that he is giving a phoney statement.

11. Conversely, Shri Anil Verma, Executive Engineer, I&PH Division, Sunder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by respondent.

In the cross-examination, he admitted that the petitioner was engaged *w.e.f.* 21.9.1988 in Sub Division Thunag. He denied that the petitioner had been removed from work on 31.10.1990. Volunteered that, he himself had left the job. He also denied that the petitioner had completed 240 days of work. He admitted that no notice of re-engagement was issued to the petitioner. Self stated that it was not given as the petitioner had not completed 240 days. He admitted that no compensation was paid to the petitioner. He specifically denied that new/fresh hands had been engaged by the department. Volunteered that, the workers had been re-engaged as per the orders of the Court. He admitted that S/Shri Param Dev, Kishori Lal, Purshotam, Rup Lal, Tara Chand had worked in the department. Self stated that they had left the work and thereafter they were re-engaged as per the orders of the Court. He clearly denied that the petitioner had been wrongly and illegally removed from service by the department.

12. Ex.RW1/B is the mandays chart relating to Shri Lal Singh.

13. Ex. RW1/C is the copy of Award dated 10.7.2012 passed in Reference No.216/2010.

14. Ex. RW1/D is the copy of order dated 24th March, 2014 passed by the Hon'ble High Court of H.P. in CWP No.5579/2013-H.

15. The engagement of the petitioner as a daily waged beldar *w.e.f.* 21.9.1988 is not in dispute. The respondent as per the pleadings and ocular evidence clearly admitted that the petitioner had been engaged as a daily waged beldar. It is an admitted fact of the parties that the petitioner had worked with the respondent upto October, 1990. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that he had orally been terminated by the respondent, whereas the stand taken by the respondent is that after 30.10.1990 the petitioner had left the job of his own.

16. It is well known that the plea of abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Anil Verma (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. No notices have been placed and exhibited on record by the respondent to show that the petitioner had been called upon by the respondent to resume the duties after he allegedly left the same. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri Anil Verma (RW1) clearly admitted that no notice had been given to the petitioner to resume his duties. Faced with the situation, it was contended by the learned Assistant District Attorney for the respondent that it was not required of the respondent to proceed against the workman by way of a domestic inquiry. True it is that the petitioner, a daily wager, was not amenable to the provisions of CCS, (CCA) Rules and as such a domestic inquiry as stipulated therein was not strictly required to be initiated. Nonetheless, absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence, of any such '*animus*' on the part of the petitioner, is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established. So, the claim of the petitioner that his services were orally terminated by the respondent *w.e.f.* 31.10.1990 has to be accepted as correct on the balance of probability.

17. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my mind, is in the negative in view of the material on record.

18. Though, the petitioner in his statement of claim as well as his affidavit Ex.PW1/A claimed that he had completed more than 240 days in the preceding twelve calendar months, but this fact is not supported by any other oral or documentary evidence on record.

19. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar



months prior to his alleged retrenchment. The law on this issue is well settled. In **R. M. Yellattu vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

20. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in November, 1990. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

21. There is no denial of the fact that in Reference No.216/2010 titled as Shri Lal Singh vs. Executive Engineer, I&PH Division, Sunder Nagar was decided by this Court on 10.7.2012. Certified copy of the Award stands placed on record by the respondent as Ex.RW1/C. While deciding the said reference, it was held by this Court that the respondent had failed to follow the principle of 'last come first go' and that new/fresh hands had also been engaged. So, there had been violation of the provisions of Sections 25-G and 25-H of the Act by the respondent. If the services of the petitioner were disengaged, then why new/fresh hands were employed and persons junior to him were re-engaged? The plea taken by the respondent of abandonment stands already negated by me above. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

22. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. While testifying in the Court as PW1, the petitioner has given his age as 47 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns land, which he cultivates. It is also admitted by him that he has also been doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

24. The learned Assistant District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was inter-alia held:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

25. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

26. In case titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a dailywager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent as a non-skilled worker and had not completed 240 days in any year. His services, as per the reference were disengaged in November, 1990 and had raised industrial dispute by issuance of demand notice after more than **twenty years** i.e. demand notice was given on 24.6.2011. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

27. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹15,000/- (Rupees fifteen thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues no. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue no.4 is answered in the negative and decided against the respondent .

Issue No. 3 :

28. Not pressed.

*Relief :*

29. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ₹15,000/- (Rupees fifteen thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
*Presiding Judge,*  
*Labour Court-cum-Industrial,*  
*Tribunal, Kangra at Dharamshala, H.P.*

---

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 251/2016

Date of Institution : 03.5.2016

Date of Decision : 14.08.2019

Shri Lajja Ram s/o Shri Mangat Ram, r/o Village Jod, P.O. and Tehsil Thunag, District Mandi, H.P. . . *Petitioner.*

*Versus*

The Executive Engineer, I&PH Division, Sunder Nagar, District Mandi, H.P. . . *Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Smt. Jasvinder Kaur Batra, Adv.

For the Respondent : Sh. Sanjeev Kumar Lakha, ADA

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Lajja Ram s/o Shri Mangat Ram, r/o Village Jod, P.O. and Tehsil Thunag, District Mandi, H.P. during November, 2000 by the

Executive Engineer, I.&P.H. Division, Sunder Nagar, District Mandi, H.P., who had worked as beldar on daily wages for 83 days during year, 1998, 199 days during year, 1999 and 200 days during year, 2000 respectively and has raised his industrial dispute after about 8 years *vide* demand notice dated 23.08.2008, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 83 days during year 1998, 199 days during year 1999 and 200 days during year, 2000 respectively and delay of about 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner, as it emerges from the statement of claim is that his services were engaged as a daily waged beldar by the respondent in August, 1998 in Sub Division, Thunag. He worked as such upto 15.11.2000, when his services were terminated by the respondent without giving any notice and paying the compensation. He had completed 240 days of work in a block of twelve calendar months preceding the date of his termination. The principle of 'last come first go' was not followed as persons junior to him, namely, S/Sh. Param Dev, Shiv Lal, Rome Chand and Lal Singh are serving the respondent/department. Even new/fresh hands have been engaged by the respondent after his (petitioner's) termination. He had approached the respondent time and again and had been assured for re-engagement, but in vain. The act and conduct of the respondent is illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short). The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. Reply was filed taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. However, it was asserted that the petitioner had been engaged as a daily waged beldar *w.e.f.* 25.8.1998 under IPH Sub Division Thunag and had worked as such intermittently upto November, 2000. He thereafter had left the job of his own. He had not completed 240 days of work in a block of twelve calendar months, as claimed. It was specifically denied that the petitioner had requested the respondent to re-engage him and that he had been given assurance of re-engagement. No junior to the petitioner had been retained. S/Shri Param Dev, Shiv Lal, Rom Chand and Lal Singh had been re-engaged as per the orders of the Court. No new/fresh hands have been engaged. Since the petitioner had abandoned the job of his own, no notice was required to be served upon him. No provisions of the Act have been violated. The petitioner was not given any assurance of re-employment. He (petitioner) has raked up the industrial dispute at a belated stage. It has resulted in the fading of the dispute. The petitioner is gainfully employed as an agriculturist. He is not entitled to any relief. The respondent, thus, prays for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 3.5.2018:

1. Whether termination of the services of petitioner by the respondent during November, 2000 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

4. Whether the claim petition is bad on the ground of delay and laches as alleged? . . . *OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Lajja Ram appeared as PW1 and tendered his statement by way of affidavit Ex.PW1/A. Shri Anil Verma (respondent) appeared as RW1 and tendered his statement by way of affidavit Ex. RW1/A, copies of mandays charts of Shri Lal Singh and the petitioner as Ex. RW1/B and Ex.RW1/C, copy of Award dated 10.7.2012 as Ex.RW1/D and copy of order dated 24.3.2014 of the Hon'ble High Court as Ex.RW1/E.

7. Arguments of the learned counsel for the petitioner and Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Partly yes

Issue No. 2 : Lump sum compensation of ` 50,000/-

Issue No. 3 : Not pressed

Issue No. 4 : Negative

Relief. : Petition is partly allowed awarding lump sum compensation of ₹ 50,000/- as per the operative part of the award.

### REASONS FOR FINDINGS

*Issues No.1, 2 and 4 :*

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Lajja Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he was engaged by the respondent in the year 1998. He denied that he had worked intermittently upto November, 2000. Further, he denied that he had not worked for 240 days or more in any year. He also denied that no breaks had ever been given to him by the department and that he himself had abandoned the work after November, 2000. He had worked with Shri Param Dev and Shri Shiv Lal. He admitted that Shri Param Dev and Shri Shiv Lal were senior to him. He admitted that S/Shri Rom Chand and Lal Singh had left the work in the year 2000. Volunteered that, they both being juniors to him, are still working in the department. He feigned ignorance that they had been re-engaged as per the orders of the Court. He admitted that thereafter no junior had been kept at work by the department. He specifically denied that since November, 2000 upto January, 2008 he had never approached the department for being re-engaged. Self stated that he had moved an application for his re-

engagement, but it was not responded to by the department. He denied that no such application had been given by him. He owns land, which he cultivates. He also does the days' drudgery privately. He denied that he is giving a phoney statement.

11. Conversely, Shri Anil Verma, Executive Engineer, I&PH Division, Sunder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by respondent.

In the cross-examination, he admitted that the petitioner was engaged in the year 1998 in Sub Division Thunag. He denied that the petitioner had been removed from work on 15.11.2000. Volunteered that, he himself had left the job. Further, he denied that the petitioner had completed 240 days of work. He admitted that no notice had been issued to the petitioner to resume his duties. Self stated that as he had not completed 240 days, so there was no need of such notice. He also admitted that no notice of termination had been issued to the petitioner. Volunteered that, it was not issued as he had not completed 240 days. Further, he admitted that no compensation had been paid to the petitioner. Self stated that he himself had abandoned the work. He specifically denied that new/fresh hands have been engaged. Self deposed that workers had been kept as per the orders of the Court. He admitted that S/Shri Param Dev and Shiv Singh have worked in the department. He cannot tell without the record whether they are still serving the department or not. He denied that S/Shri Lal Singh and Rom Chand had been kept at work after the petitioner. He admitted that Shri Lal Singh was re-engaged by the department. He denied that the petitioner had been removed from service illegally.

12. Ex.RW1/B is the mandays chart relating to Shri Lal Singh.

13. Ex.RW1/C is the copy of mandays chart pertaining to the petitioner

14. Ex. RW1/D is the copy of Award dated 10.7.2012 passed in Reference No.216/2010.

15. Ex. RW1/E is the copy of order dated 24th March, 2014 passed by the Hon'ble High Court of H.P. in CWP No.5579/2013-H.

16. The engagement of the petitioner as a daily waged beldar in August, 1998 is not in dispute. The respondent as per the pleadings and ocular evidence clearly admitted that the petitioner had been engaged as a daily waged beldar on 25.8.1998. It is an admitted fact of the parties that the petitioner had worked with the respondent upto November, 2000. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that he had orally been terminated by the respondent, whereas the stand taken by the respondent is that after November, 2000 the petitioner had left the job of his own.

17. It is well known that the plea of abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Anil Verma (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. No notices have been placed and exhibited on record by the respondent to show that the petitioner had been called upon by the respondent to resume the duties after he allegedly left the same. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri Anil Verma (RW1) clearly admitted that no notice had been

given to the petitioner to resume his duties. Faced with the situation, it was contended by the learned Assistant District Attorney for the respondent that it was not required of the respondent to proceed against the workman by way of a domestic inquiry. True it is that the petitioner, a daily wager, was not amenable to the provisions of CCS, (CCA) Rules and as such a domestic inquiry as stipulated therein was not strictly required to be initiated. Nonetheless, absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence, of any such '*animus*' on the part of the petitioner, is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/ employer is not established. So, the claim of the petitioner that his services were orally terminated by the respondent in November, 2000 has to be accepted as correct on the balance of probability.

18. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my mind, is in the negative in view of the material on record.

19. Though, the petitioner in his statement of claim as well as his affidavit Ex.PW1/A claimed that he had completed more than 240 days in the preceding twelve calendar months, but this fact is not supported by the mandays chart, copy of which is placed on record as Ex.RW1/C. It unfolds that the petitioner did not complete 240 days of work in a block of twelve calendar months preceding the date of his termination *i.e.* November, 2000, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

20. There is no denial of the fact that in Reference No.216/2010 titled as Shri Lal Singh vs. Executive Engineer, I&PH Division, Sunder Nagar was decided by this Court on 10.7.2012. Certified copy of the Award stands placed on record by the respondent as Ex.RW1/D. While deciding the said reference, it was held by this Court that the respondent had failed to follow the principle of 'last come first go' and that new/fresh hands had also been engaged. So, there had been violation of the provisions of Sections 25-G and 25-H of the Act by the respondent. If the services of the petitioner were disengaged, then why new/fresh hands were employed and persons junior to him were re-engaged? The plea taken by the respondent of abandonment stands already negated by me above. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

21. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

22. While testifying in the Court as PW1, the petitioner has given his age as 52 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns land, which he cultivates. It is also admitted by him that he has also been doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

23. The learned Assistant District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance,

his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was inter-alia held:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

24. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

25. In case titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all had worked in a span of about three years for only 482 days and had not completed 240 days in any year. His services were disengaged in November, 2000. He had worked as a non-skilled worker and had raised the industrial dispute by issuance of demand notice after more than **eight years** i.e. demand notice was given 23.8.2008. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.



26. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ` 50,000/- (Rupees fifty thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue No. 4 is answered in the negative and decided against the respondent.

*Issue No. 3 :*

27. Not pressed.

*Relief :*

28. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ₹50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
*Presiding Judge,*  
*Labour Court-cum-Industrial,*  
*Tribunal, Kangra at Dharamshala, H.P.*

---

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 138/2017

Date of Institution : 21.6.2017

Date of Decision : 16.08.2019

Shri Sujan Singh s/o Shri Dharam Singh, r/o VPO Bangarh, District Una, H.P. . .*Petitioner.*

*Versus*

The General Manager, M/s Industrial Engineering Corporation, 51-B, Industrial Area, Mehatpur, Tehsil & District Una, H.P. . .*Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : None for the petitioner

For the Respondent : Shri Manoj Kumar, Adv. Vice

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Sujan Singh s/o Shri Dharam Singh, r/o V.P.O. Bangarh, District Una, H.P. *w.e.f.* 24-06-2015 by the General Manager, M/s Industrial Engineering Corporation, 51-B, Industrial Area, Mehatpur, Tehsil & District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged as a powder cutting workman by the respondent in the month of July, 2010 and had worked upto 23.6.2015. His work and conduct was fully satisfactory and upto the mark of his superiors. He had completed 240 days in each and every calendar year. In June, 2015, the owner of the company, namely, Shri Sunil Aggarwal had called the petitioner along-with Shri Jarnail Singh and Shri Vijender Kumar in his office and had got signed a blank paper. Due to this reason on 12.6.2015, the petitioner and his co-workers had filed a complaint before Superintendent of Police, District Una, against the owner of the company. The services of the petitioner had been unlawfully terminated by the respondent/management without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No show cause notice had been issued to the petitioner before terminating his service, nor any inquiry was conducted against him. After the termination of the services of the petitioner, the respondent/management had engaged new/fresh hands in place of the petitioner and no opportunity was given to him for re-employment and as such the management had violated the provisions of Sections 25-G and 25-H of the Act. The act of the respondent was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act. It is asserted that the petitioner is unemployed and not gainfully employed anywhere from the date of his illegal termination. He was getting Rs. 5,500/- per month at the time of his unlawful termination. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, locus standi, estoppel, suppression of material facts and cause of action. The contents of the petitioner were denied on merits. It was denied that the services of the petitioner had been engaged as a powder cutting workman. It was claimed that he was working as a casual labour in the firm. Neither the signatures of the petitioner were obtained by the management on a blank paper, nor the respondent had terminated his services. He had willfully absented from duty *w.e.f.* 24.6.2015. The respondent had not violated the provisions of Section 25-F (a) and (b) of the Act. Opportunity of re-employment was given to him to join his duty on 24.5.2016, but he had reported for duty on 31.5.2015 and had refused to do the work assigned to him, so the violation of Sections 25-G and 25-H does not arise. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Arguments of the learned vice counsel for the respondent heard and records gone through.

6. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent w.e.f. 23.6.2015 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a powder cutting workman in July, 2010. It was also his claim that he had completed 240 days in each calendar year. A plea was also taken to the effect that the respondent had not adhered to the principle of 'last come first go', as persons junior to the petitioner were retained and that fresh hands had also been engaged. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

7. Be it recorded that earlier Shri N.L. Kaundal, authorized representative had been appearing for the petitioner. However, he as per his separate statement recorded on 21.2.2019 had stated that as despite repeated correspondence, the petitioner was not turning up, so he did not want to appear on his behalf. Summons were then sent for the service of the petitioner for 16.8.2019. He was personally served for this date. However, he did not put in appearance before this Court today, despite the case being called several times since morning. No one else had put in appearance on his behalf. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

8. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity sake). Section 2 (b) of the Act defines the Award as under:—

*“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”*

9. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

*“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”*

10. Rule 22 reads thus:—

*“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”*

11. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

*“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a*

*Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."*

12. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, they are unwilling to adduce evidence or argue their case.

13. In the instant case, neither the petitioner nor anyone else had put in appearance before this Tribunal today i.e. 16.8.2019. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

14. It was claimed by the petitioner that he had been engaged as a powder cutting workman by the respondent in July, 2010. The respondent denied this fact and claimed that the petitioner was merely engaged as a casual labourer. So, in these circumstances it was required of the petitioner to firstly prove that he had been engaged as a power cutting workman by the respondent and then to show that the termination of his services on 24.6.2015 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but his allegations therein have remained a mere saying on record, as no ocular and documentary evidence in support thereof was led by him. At the risk of repetition, the petitioner had not put in appearance before this Tribunal. In this view of the matter the petitioner is not entitled to any relief, as claimed for in the statement of claim.

15. In the light of what has been discussed hereinabove, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 16th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

---

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 679/2016  
Date of Institution : 03.10.2016  
Date of Decision : 16.08.2019

Shri Baldev s/o Shri Sukh Ram, r/o Village Riyur, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

*Versus*

1. The Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla -2
2. The Executive Engineer, HPPWD, Division Dharampur, District Mandi, H.P. . *Respondents.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent(s) : Sh. Ashok Dhiman, D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Baldev S/o Sh. Sukh Ram, Vill. Riyur, P.O. Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. 3/1999 by (1) the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla, and by (2) the Executive Engineer, HPPWD, Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during the 12/1998 to 3/1999, only for 98 days, and has raised his industrial dispute *vide* demand notice dated 16.3.2015 after more than 16 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged on muster roll basis in the month of January, 1999. He worked as such upto March, 1999 and had completed more than 240 days during his service with the respondents in each calendar year, and was thus covered under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). It is alleged that the respondents had unlawfully terminated the services of the petitioner. It is also his case that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof, which is a clear violation of the provisions of Section 25-F of the Act. At the time of his termination, persons junior to him were retained in service by the respondent. The respondents had violated the principle of ‘first come last go’. The names of the juniors, who were retained in service by the respondents are S/Sh./Smt. Shashi Pal, Roshani Devi, Mamta Devi and Inder Singh. It is further alleged that after termination of the services of the petitioner, the respondents had appointed new/fresh hands, namely, S/Sh./Smt. Pardeep Kumar, Vipin Kumar, Lekh Raj, Subhash Chand, Sunita Devi, Kirna Devi, Sunita Devi, Ritesh Kumar, Chanchla Devi, Ramesh Kumar and Ruma Devi. He was not given an opportunity of reemployment. From the date of his disengagement, he is unemployed. The act of the respondent in terminating the services of the petitioner was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. A joint reply was filed by the respondents taking preliminary objections regarding lack of maintainability and that the petition suffered from the vice of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the month of December, 1998 and he remained engaged till the month of March, 1999. He had worked intermittently with the department and had left the job of his own sweet will. He had not completed 240 days in each calendar year, so there was no need to serve any notice under Section 25-F of the Act. It is denied that the respondents had terminated the services of the petitioner. It was asserted that the respondents had retrenched daily waged workmen in the month of February, 2004 and July, 2005 respectively, but the petitioner had left the job of his own sweet will in March, 1999. Regarding the allegation of engagement of persons junior to the petitioner, it was claimed that Shri Shahi Pal and Smt. Roshani Devi had worked with the department continuously, while workers, namely, Smt. Mamta Devi and Shri Inder Singh had been engaged on compassionate grounds. So, there was no violation of the provisions of Section 25-G of the Act. The workers mentioned in para No. 4 of the petition were engaged on compassionate grounds, so the question of giving opportunity for re-engagement to the petitioner did not arise at all. There was not violation of the provisions of Section 25-H of the Act by the respondents. The demand notice was raised by the petitioner only in the year 2015, *i.e.* after about 16 years, hence the same is bad due to delay and laches. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 13.9.2018:

1. Whether termination of the service of petitioner by the respondents during March, 1999 is/was legal and justified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition suffers from delay and laches as alleged? . . .*OPR.*

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Baldev appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of mandays chart of Sh. Shashi Kant as Ex. PW1/B and copy of RTI information dated 13.11.2013 as Ex. PW1/C. Shri Jai Pal Naik (respondent No. 2) appeared as RW1, who tendered his statement by way of affidavit as Ex. RW1/A and copy of mandays chart as Ex. RW1/B.

7. Arguments of the learned Authorized Representative for the petitioner and learned District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	: Partly yes
Issue No. 2	: Lump sum compensation of ₹ 20,000/-
Issue No. 3	: Not pressed
Issue No. 4	: Negative
Relief	: Petition is partly allowed awarding lump sum compensation of ₹20,000/- as per the operative part of the award.

### REASONS FOR FINDINGS

*Issues No. 1, 2 and 4 :*

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Baldev (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he had been engaged in the month of December, 1998. He denied that he had worked intermittently with the respondents from December, 1998 upto March, 1999. He denied that no person junior to him had been engaged by the department. He admitted that he had given the demand notice in the month of March, 2015. He denied that he had left the work of his own after March, 1999. Self stated that, he was removed. He admitted that he had not made any representation from the month of March, 1999 upto March, 2015. Volunteered that, he had orally approached the department. He specifically denied that he had not worked for 240 days in any year. He admitted that he does the days' drudgery privately. He also admitted that he owns land, which he cultivates.

11. Ex. PW1/B is the copy of mandays chart relating to Shri Shashi Kant.

12. Ex. PW1/C is the copy of letter dated 13.11.2013 regarding Information Under RTI Act, 2005.

13. Conversely, Shri Jai Pal Naik, Executive Engineer, HPPWD, Division Dharampur (respondent No. 2) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he admitted that when the petitioner was employed by the department, no appointment letter was issued. He admitted that as per the record there is no correspondence regarding the petitioner having left the job. He also admitted that no compensation has been given to the petitioner as per record. He was feigned ignorance that the persons mentioned in para No. 4 of the statement of claim are junior to the petitioner. He was also not aware that the juniors are regularly working. Self stated that he could only tell after seeing the record.

14. Ex. RW1/B is the mandays chart relating to the petitioner.

15. The engagement of the petitioner as a daily waged beldar is not in dispute. The respondents as per their pleadings and ocular evidence clearly admitted that the petitioner had been engaged as a daily waged beldar. It was claimed by the petitioner that he had been initially engaged in January, 1999, whereas the stand taken by the respondents is that he had been engaged in December, 1998. Placed on record by the respondents is the copy of mandays chart as Ex.RW1/B relating to the petitioner. Its perusal reveals that the petitioner had been engaged by the respondents in the month of December, 1998 for the first time as a daily waged beldar. It is an admitted fact of the parties that the petitioner had worked with the respondents upto March, 1999. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that he had orally been terminated by the respondents, whereas the stand taken by the respondents is that after March, 1999 the petitioner had left the job of his own.

16. It is well known that the plea of abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondents. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Jai Pal Naik (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. No notices have been placed and exhibited on record by the respondents to show that the petitioner had been called upon by the respondents to resume the duties after he allegedly left the same. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. Shri Jai Pal Naik (RW1) clearly admitted that as per the record there has been no correspondence with the petitioner of his leaving the job. Faced with the situation, it was contended by the learned District Attorney for the respondents that it was not required of the respondents to proceed against the workman by way of a domestic inquiry. True it is that the petitioner, a daily wager, was not amenable to the provisions of CCS, (CCA) Rules and as such a domestic inquiry as stipulated therein was not strictly required to be initiated. Nonetheless, absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondents. In the present case as it emerges from the evidence on record, so was not done by the respondents. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence, of any such '*animus*' on the part of the petitioner, is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondents/employer is not established. So, the claim of the petitioner that his services were orally terminated by the respondents *w.e.f.* March, 1999 has to be accepted as correct on the balance of probability.

17. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of 12 calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. As per the copy of mandays chart Ex. RW1/B, the petitioner had only worked for a total of 98 days from December, 1998 upto March, 1999. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

18. Ex. PW1/B is the seniority list/mandays chart relating to Shri Shashi Kant. It reveals that Shri Shashi Kant was appointed by the respondents in January, 2000. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex.RW1/B is December, 1998 and that the month of termination of his services, as per the reference is March, 1999. There is nothing on record to show that Shri Shashi Kant was senior to the petitioner. This indicates that fresh/new hand had been engaged by the respondents/department after the termination of the services of the petitioner.



19. There is no denial of the fact that in Reference No. 525/2016 titled as *Shri Som Datt vs. Executive Engineer, HPPWD Dharampur* was decided by this Court on 23.3.2019. While deciding the said reference, it was held by this Court that the respondent had failed to follow the principle of 'last come first go'. So, there had been violation of the provisions of Section 25-G of the Act by the respondent. If the services of the petitioner were disengaged, then why new/fresh hand was employed and persons junior to him were re-engaged? The plea taken by the respondents of abandonment stands already negated by me above. There is nothing on the file to establish that at the time of engaging new/fresh hand or re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

20. Such being the situation, I have no hesitation to conclude that the respondent have contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

21. While testifying in the Court as PW1, the petitioner has given his age as 38 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing days' drudgery privately. It is also admitted by him that he also owns land, which he cultivates. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

22. The learned District Attorney for the respondents contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another.* (1999) 6 SCC 82, wherein it was inter-alia held:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

23. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as *Liaq Ram vs. State of H.P. and ors.*, 2012 (2) Him. L.R.(FB) 580 (majority view) will also be advantageous on this aspect of the matter.

24. In case titled as *Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh* reported in 2013 (136) FLR 893 (SC), it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely

reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondents only for 98 days as a non-skilled worker and had not completed 240 days in any year. His services, as per the reference were disengaged in March, 1999 and had raised the industrial dispute by issuance of demand notice after more than **sixteen years** i.e. demand notice was given on 16.3.2015. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

25. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ` 20,000/- (Rupees twenty thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue No.4 is answered in the negative and decided against the respondents.

*Issue No. 3 :*

26. Not pressed.

*Relief :*

27. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondents are hereby directed to pay a compensation of ` 20,000/- (Rupees twenty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondents to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 16th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 158/2017

Date of Institution : 30.3.2017

Date of Decision : 17.08.2019

Shri Sukh Ram s/o Shri Biptu Ram, r/o Village Chimba Balh, P.O. Rissa, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

*Versus*

1. The Engineer-in-Chief H.P.P.W.D., Nirman Bhawan, Shimla, H.P.
2. The Executive Engineer, Sarkaghat Division, HPPWD, District Mandi, H.P. . *Respondents.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Ashok Dhiman, D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of the services of Shri Sukh Ram s/o Shri Biptu Ram, r/o Village Chimba Balh, P.O. Rissa, Tehsil Sarkaghat, District Mandi, H.P. during May, 2000 by (i) the Engineer-in-Chief, H.P.P.W.D. Nirman Bhawan, H.P.P.W.D., District Shimla, H.P. (ii) Executive Engineer, Sarkaghat Division, H.P.P.W.D., District Mandi, H.P. who has worked as beldar on daily wages basis and has raised her industrial dispute *vide* demand notice dated 09-11-2015 after delay of more than 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during year 1999 and 2000 for 97.5, 72.5 days respectively and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as a daily wager on muster roll basis *w.e.f.* 1.6.1999 and had worked as such upto May, 2000. During the aforesaid period the petitioner had been engaged and disengaged by the respondents by giving fictional breaks to him from time to time, so that he could not complete 240 days of continuous service as envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). His services were unlawfully terminated in May, 2000 by the respondents without complying with the mandatory provisions of the Act. No notice was issued, nor any inquiry was conducted against him. He was also not paid any retrenchment compensation by the respondents. The principle of ‘last come first go’ had not been adhered to by the respondents, as at the time of termination of his services persons junior to him,

namely, S/Sh. Narain Singh and Lekh Raj had been retained. New/fresh hands, namely, S/Sh./Smt. Deep Kumar, Partap Singh, Prem Singh, Vinod Kumar, Manohar Lal, Giano Devi, Raj Kumar, Nirmla Devi, Geeta Devi, Asha Devi, Kaushalya Devi, Bhagi Rath and Jeet Kumar were engaged. No opportunity of re-employment was afforded to the petitioner by the respondents. The act of the respondents in terminating the services of the petitioner in May, 2000, without complying with the provisions of the Act is highly unjustified, arbitrary and unconstitutional. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. A joint reply was filed by them taking preliminary objections regarding lack of maintainability and that the petition suffered from the vice of delay and laches. The contents of the petition were denied on merits. However, it was admitted that the petitioner had been engaged as a beldar *w.e.f.* 1.6.1999. He had worked intermittently upto May, 2000. Thereafter, he had left the work of his own. Neither any fictional breaks were given to the petitioner, nor he had been disengaged by the respondents. He had not completed 240 days in the preceding twelve calendar months so as to fulfill the conditions of Section 25-B of the Act. The principle of 'last come first go' had been followed, as no junior was ever retained or engaged by the respondents. No new/fresh hands were appointed. S/Sh./Smt. Deep Kumar, Partap Singh, Prem Singh, Vinod Kumar, Manohar Lal, Giano Devi, Raj Kumar, Asha Devi and Kaushalya Devi were all engaged on compassionate grounds, as per the died and harness policy of the Government. Smt. Geeta Devi and Shri Bhagi Rath were senior to the petitioner. Smt. Neelam Dei and Shri Jeet Kumar were also engaged on compassionate grounds. The petitioner is gainfully employed as an agriculturist. The respondents, thus, pray for the dismissal of the claim.

4. Rejoinder denying the contents of the reply and affirming those of the statement of claim was filed.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 02.11.2018:

1. Whether termination of the service of petitioner by the respondents during May, 2000 is/was legal and justified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition suffers from delay and laches as alleged? . . .*OPR.*

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Sukh Ram appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of mandays chart of Sh. Shashi Kant as Ex. PW1/B and copy of seniority list of daily waged workers as Ex.PW1/B. Shri Arvind Lakhnupal (respondent No. 2) appeared as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of mandays chart as Ex.RW1/B, copies of seniority lists of Shri Lekh Raj and Shri Narain Singh as Ex.RW1/C & Ex.RW1/D, copy of letter dated 29.11.2005 as Ex.RW1/E, copy of letter dated 22.2.2006 regarding engagement of Sh. Raj Kumar as Ex.RW1/F (02 pages), copy of letter No.8784 as Ex.RW1/G, copy of letter dated 27.12.2005 as Ex.RW1/H,

copy of letter dated 20.1.2006 as Ex. RW1/J (02 pages), copy of letter No.28279-84 as Ex.RW1/K, copy of letter dated 13.9.2012 as Ex.RW1/L, copy of letter dated 17.1.2006 as Ex.RW1/M (02 pages), copy of letter dated 27.12.2005 as Ex.RW1/N, copy of letter dated 3.2.2006 as Ex.RW1/O, copy of muster-roll dated 6.3.2006 as Ex.RW1/P, copy of office order dated 26.8.2017 as Ex.RW1/Q, copy of office order dated 10.10.2013 as Ex.RW1/R, copy of letter dated 21.5.2011 as Ex.RW1/S and copy of letter dated 11.9.2007 as Ex.RW1/T.

7. Arguments of the learned counsel/authorized representative for the petitioner and learned District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes, Partly no.

Issue No. 2 : Lump sum compensation of ` 25,000/-

Issue No. 3 : Not pressed

Issue No. 4 : Negative

Relief. : Petition is partly allowed awarding lump sum compensation of ` 25,000/- as per the operative part of the award.

### REASONS FOR FINDINGS

*Issues No.1, 2 and 4 :*

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Sukh Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he had been engaged by the respondents *w.e.f.* 1.6.1999. He denied that he had worked intermittently with the respondents from 1.6.1999 upto May, 2000. He further denied that no person junior to him had been engaged by the department. He admitted that he had given the demand notice in the month of November, 2015. He specifically denied that he had left the work of his own after May, 2000. Self stated that, he was removed. He clearly admitted that he had not made any representation from the month of June, 2000 upto August, 2015. Volunteered that, he had orally approached the department. He denied that he had not worked for 240 days in any year. He admitted that he does the days' drudgery privately. He also admitted that he owns land, which he cultivates. Further, he denied that S/Sh./Smt. Deep Kumar, Partap Singh, Prem Singh, Vinod Kumar, Manohar Lal, Gyano Devi, Raj Kumar, Asha Devi and Kaushalya Devi were kept at work on compassionate grounds. He also denied that Smt. Geeta Devi and Shri Bhagi Rath were senior to him. He denied that he is giving a phoney statement.

11. Ex. PW1/B is the copy of seniority list of daily waged workers working under Baldwara Sub-Division.

12. Conversely, Shri Arvind Lakhanpal, Executive Engineer, HPPWD, Division Sarkaghat (respondent No. 2) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondents.

In the cross-examination, he admitted that at the time of appointment no appointment letter was issued to the petitioner. Volunteered that, the muster-rolls were issued in his name. He admitted that no service conditions were settled, when the petitioner was engaged. Further, he admitted that no notice or letter had been issued to the petitioner for his absence. He denied that Shri Lekh Raj is junior to the petitioner as per the records. He specifically admitted that HPPWD Sub-Division Baldwara is under HPPWD Division Sarkaghat. He admitted that seniority list of class-IV employees is maintained at Divisional level. He further admitted that the petitioner was a class-IV beldar. Further, he admitted that the persons as shown at serial No.13 to 17 in Ex.RW1/B are junior to the petitioner. He feigned ignorance whether these persons have been regularized and whether or not they are still serving the department. He clearly admitted that when S/Sh./Smt. Deep Kumar, Partap Sinigh, Prem Singh, Vinod Kumar, Manohar Lal, Raj Kumar, Giano Devi, Asha Devi and Kaushalya Devi were engaged on compassionate grounds, no opportunity of re-employment was afforded to the petitioner. It was denied by him that after the year 2000 many fresh hands were engaged. Self stated that they were engaged on compassionate grounds.

13. Ex. RW1/B is the mandays chart relating to the petitioner.

14. Ex. RW1/C is the copy of year wise seniority list pertaining to Sh. Lekh Raj (Beldar).

15. Ex.RW1/D is the copy of year wise seniority list with regard to Shri Narain Singh (Beldar).

16. Ex.RW1/E is the copy of letter dated 29.11.2005 in respect of Shri Prem Singh.

17. Ex.RW1/F is the copy of letter dated 22.2.2006 regarding engagement of Shri Raj Kumar.

18. Ex.RW1/G is the copy of letter no.8784 regarding employment assistance case of Smt. Neelma Devi w/o late Shri Krishan Chand daily waged beldar on compassionate ground.

19. Ex.RW1/H is the copy of letter dated 27.12.2005 regarding employment assistance case in respect of Sh. Partap Singh s/o late Sh. Marchu Ram, W.C. Beldar.

20. Ex.RW1/J is the copy of letter dated 30.1.2006 regarding employment assistance case in respect of Sh. Manohar Lal s/o Late Sh. Roop Lal Beldar applied for the post of beldar.

21. Ex.RW1/K is the copy of letter No. 28279-84 regarding employment assistance case of Kumari Asha Devi d/o Shri Kashmir Singh, daily waged Beldar on compassionate ground.

22. Ex.RW1/L is the copy of letter dated 13.9.2012 regarding employment assistance case in respect of Sh. Ajeet Singh s/o late Sh. Lachman Dass, daily waged Beldar on compassionate ground.

23. Ex.RW1/M is the copy of letter dated 27.12.2005 regarding employment assistance case in respect of Sh. Vinod Kumar s/o Shri Amar Singh W.C. Beldar applied for the post of clerk on compassionate ground.

24. Ex.RW1/N is the copy of letter dated 27.12.2005 regarding employment assistance case in respect of Sh. Partap Singh s/o late Sh. Marchu Ram, W.C. Beldar, which corresponds to Ex.RW1/H.

25. Ex.RW1/O is the copy of letter dated 3.2.2006 regarding appointment of sons/daughters/near relations of a Govt. servant who dies in harness leaving his family in immediate need of assistance modification thereof.

26. Ex.RW1/P is the copy of the muster roll from 6.3.2006 to 31.3.2006 relating to Smt. Giano Devi.

27. Ex.RW1/Q is the copy of Office Order dated 26.8.2017 pertaining to Smt. Kaushalya Devi.

28. Ex.RW1/R is the copy of Office Order dated 10.10.2013 relating to Shri Deep Kumar.

29. Ex.RW1/S is the copy of letter dated 21.5.2011 regarding policy to regulate the services of part time workers.

30. Ex.RW1/T is the copy of letter dated 11.9.2007 regarding policy to regulate the services of part-time workers.

31. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in HPPWD Division Sarkaghat. The mandays chart Ex.RW1/B produced by the respondents is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged on 1.6.1999 by respondent No. 2 and that he had worked as such upto 31.5.2000. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that he had orally been terminated by the respondents, whereas the stand taken by the respondents is that after May, 2000, the petitioner had left the job of his own.

32. It is well known that the plea of abandonment has to be proved like any other fact by the respondents/employer. The burden of proving of abandonment is upon the respondents. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Arvind Lakhanpal (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. There is nothing on record to show that a notice was served upon the petitioner by either of the respondents calling upon him to resume the duties after he allegedly left the same. Shri Arvind Lakhanpal (RW1) clearly admitted that for remaining absent from duty, no notice or letter was issued to the petitioner. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. Faced with the situation, it was contended by the learned District Attorney for the respondents that it was not required of the respondents to proceed against the workman by way of a domestic inquiry. True it is that the petitioner, a daily wager, was not amenable to the provisions of CCS, (CCA) Rules and as such a domestic inquiry as stipulated therein was not strictly required to be initiated. Nonetheless, absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondents.

In the present case as it emerges from the evidence on record, so was not done by the respondents. Then, ‘animus’ to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence, of any such ‘animus’ on the part of the petitioner, is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondents/employer is not established. So, the claim of the petitioner that his services were orally terminated by the respondents *w.e.f.* May, 2000 has to be accepted as correct on the balance of probability.

33. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. As per the copy of mandays chart Ex. RW1/B, the petitioner had only worked for a total of 183 days from June, 1999 upto May, 2000. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

34. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:

*“25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.*

35. The petitioner in paragraph 03 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, S/Shri Narain Singh and Lekh Raj, who were junior to him, were retained in service by the respondents. This averment has not been established, as the copy of seniority list Ex.PW1/B of daily waged workers working under Baldwara Sub-Division, no where reflects the names of the aforementioned workers. As per this seniority list of daily waged workers relating to Shri Jeet Ram and sixteen others reveals that S/Sh. Jeet Ram, Deep Ram, Mast Ram, Suresh Chand and Mohinder Singh, Baldev and Hem Raj were appointed by the respondents in September, 1993, whereas the services of Shri Arjun Singh were engaged in January, 1993, that of Shri Jai Ram in October, 1993, of Shri Baldev s/o Sh. Dandu Ram in December, 1993, Shri Dandu Ram in January, 1998 and that of Shri Som Dutt in November, 1997. At the cost of reiteration, I will like to add that the date of initial appointment of the petitioner as per Ex.RW1/B is 01.6.1999. So, all the aforesaid persons were senior to the petitioner. Faced with the situation, it was vociferously argued by the learned counsel for the petitioner that Shri Arvind Lakhanpal (RW1) in his cross-examination admitted that the workers mentioned at serial No.13 to 17 in Ex.PW1/B were junior to the petitioner. True it is that such an admission has been made by respondent No. 2, but the fact of matter is that the services of the petitioner stood disengaged in May, 2000, whereas the five workmen figuring at serial No. 13 to 17 of the seniority list Ex.PW1/B were engaged thereafter *i.e.* from January, 2002 to December, 2006. This only indicates that new/fresh hands had been engaged by the respondents. It was also contended that Shri Narain Singh was junior to the petitioner. This cannot be accepted. Ex.RW1/D is the copy of mandays chart relating to Shri Narain Singh. It reveals that said Shri Narain Singh was engaged by the respondents in June, 1999. The petitioner, as per the admitted case of the parties, was also engaged in June, 1999. Therefore, it cannot be held that the respondents had violated the provisions of Section 25-G of the Act.

36. As per Ex. PW1/B, the seniority list of daily waged workers working under Baldwara Sub-Division, Shri Manohar Lal was appointed by the respondents in January, 2002,



whereas the services of Shri Raj Kumar were engaged in March, 2006, those of S/Shri Vinod Kumar and Deep Kumar in December, 2006 and that of Shri Jagar Nath in August, 2007. Admittedly, the date of initial appointment of the petitioner is 1.6.1999. His services, as per the discussion above, were terminated by the respondents in May, 2000. There is nothing on record to show that S/Shri Manohar Lal, Raj Kumar, Vinod Kumar, Jagar Nath and Deep Kumar was senior to the petitioner. Rather, it was clearly admitted by Shri Arvind Lakhanpal (RW1) that they were junior to the petitioner. This indicates that fresh/new hands had been engaged by the respondents/department after the termination of the services of the petitioner.

37. Such being the situation, I have no hesitation to conclude that the respondents have contravened the provisions of Section 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

38. While testifying in the Court as PW1, the petitioner has given his age as 47 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing days' drudgery privately. It is also admitted by him that he also owns land, which he cultivates. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

39. The learned District Attorney for the respondents contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82, wherein it was inter-alia held:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

40. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view) will also be advantageous on this aspect of the matter.

41. In case titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh reported in 2013 (136) FLR 893 (SC), it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble

High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondents only for 183 days as a non-skilled worker and had not completed 240 days in any year. His services, as per the reference were disengaged in May, 2000 and had raised the industrial dispute by issuance of demand notice after more than **fifteen years** i.e. demand notice was given on 09.11.2015. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

42. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹ 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue No. 4 is answered in the negative and decided against the respondents.

*Issue No. 3 :*

43. Not pressed.

*Relief :*

44. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondents are hereby directed to pay a compensation of ₹ 25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondents to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 157/2017

Date of Institution : 30.3.2017

Date of Decision : 19.08.2019

Shri Pawan Kumar s/o Shri Badri Dutt, r/o Village Tandoh, P.O. Rissa, Tehsil Sarkaghat,  
District Mandi, H.P. . *Petitioner.*

*Versus*

1. The Engineer-in-Chief H.P.P.W.D., Nirman Bhawan, Shimla, H.P.
2. The Executive Engineer, Sarkaghat Division, HPPWD, District Mandi, H.P. . *Respondents.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Ashok Dhiman, D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of the services of Shri Pawan Kumar s/o Shri Badri Dutt, r/o Village Tandoh, P.O. Rissa, Tehsil Sarkaghat, District Mandi, H.P. *w.e.f.* 01-01-2000 by (i) the Engineer-in-Chief, H.P.P.W.D. Nirman Bhawan, Shimla, District Shimla, H.P. (ii) Executive Engineer, Sarkaghat Division, H.P.P.W.D., District Mandi, H.P., who has worked as beldar on daily wages basis and has raised his industrial dispute vide demand notice dated 09-11-2015 after delay of more than 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during year 1999 for 157 days and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. After the receipt of the abovestated reference, a Addendum dated 23rd January, 2019 was received from the appropriate government which reads as under:

“Whereas, a reference has been made to the Ld. Labour Court-cum-Industrial Tribunal, Dharamshala, District Kangra, H.P. *vide* notification of even No. dated 09-01-2017 for legal adjudication. However, inadvertently the correct facts could not be mentioned about the working period of the workman in the said notification. The following working period is added in the *ibid* reference, “working period from 01-01-2000 to 31-07-2000 for 182 days”.

3. The case of the petitioner as it emerges from the statement of claim is that he was appointed as a daily wager on muster roll basis *w.e.f.* 1.6.1999 and had worked as such upto 31.7.2000. During the aforesaid period the petitioner had been engaged and disengaged by the respondents by giving fictional breaks to him from time to time, so that he could not complete 240 days of continuous service as envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). His services were unlawfully terminated in 31.7.2000 by the respondents without complying with the mandatory provisions of the Act. No notice was issued, nor any inquiry was conducted against him. He was also not paid any retrenchment compensation by the respondents. The principle of 'last come first go' had not been adhered to by the respondents, as at the time of termination of his services persons junior to him, namely, S/Sh. Narain Singh and Lekh Raj had been retained. New/fresh hands, namely, S/Sh./Smt. Deep Kumar, Partap Singh, Prem Singh, Vinod Kumar, Manohar Lal, Giano Devi, Raj Kumar, Nirmla Devi, Geeta Devi, Asha Devi, Kaushalya Devi, Bhagi Rath and Jeet Kumar were engaged. No opportunity of re-employment was afforded to the petitioner by the respondents. The act of the respondents in terminating the services of the petitioner on 31.7.2000, without complying with the provisions of the Act is highly unjustified, arbitrary and unconstitutional. The petitioner, thus, prays for his re-engagement with all consequential benefits.

4. On notice, the respondents appeared. A joint reply was filed by them taking preliminary objections regarding lack of maintainability and that the petition suffered from the vice of delay and laches. The contents of the petition were denied on merits. However, it was admitted that the petitioner had been engaged as a beldar *w.e.f.* 17.6.1999. He had worked intermittently upto July, 2000. Thereafter, he had left the work of his own. Neither any fictional breaks were given to the petitioner, nor he had been disengaged by the respondents. He had not completed 240 days in the preceding twelve calendar months so as to fulfill the conditions of Section 25-B of the Act. The principle of 'last come first go' had been followed, as no junior was ever retained or engaged by the respondents. No new/fresh hands were appointed. S/Sh./Smt. Deep Kumar, Partap Singh, Prem Singh, Vinod Kumar, Manohar Lal, Giano Devi, Raj Kumar, Asha Devi and Kaushalya Devi were all engaged on compassionate grounds, as per the died and harness policy of the Government. Smt. Geeta Devi and Shri Bhagi Rath were senior to the petitioner. Smt. Neelam Dei and Shri Jeet Kumar were also engaged on compassionate grounds. The petitioner is gainfully employed as an agriculturist. The respondents, thus, pray for the dismissal of the claim.

5. Rejoinder denying the contents of the reply and affirming those of the statement of claim was filed.

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 02.11.2018:

1. Whether termination of the service of petitioner by the respondents *w.e.f.* 01-01-2000 is/was legal and justified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition suffers from delay and laches as alleged? . . .*OPR.*

Relief.

7. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Pawan Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of demand notice as Ex.PW1/B and copy of seniority list of daily waged workers working under Baldwara Sub-Division as Ex.PW1/C.

8. However, on receipt of copy of Addendum dated 23rd January, 2019 from the appropriate Government, issue no.1 aforesaid was recast as follows vide order dated 25.2.2019:

1. Whether the termination of the services of the petitioner by the respondents *w.e.f.* 31.7.2000 is/was illegal and unjustified? .*OPP.*

9. On the recast issue aforesaid, no additional evidence was sought to be led by the petitioner, as per the statement of Shri N.L. Kaundal, AR separately recorded and placed on the file.

10. The respondents examined Shri Arvind Lakhanpal (respondent No. 2), who appeared as RW1 and tendered his statement by way of affidavit as Ex. RW1/A, copy of mandays chart as Ex.RW1/B, copies of seniority lists of Shri Lekh Raj and Shri Narain Singh as Ex.RW1/C & Ex.RW1/D, copy of letter dated 29.11.2005 as Ex.RW1/E, copy of letter dated 22.2.2006 regarding engagement of Sh. Raj Kumar as Ex.RW1/F (02 pages), copy of letter No.8784 as Ex.RW1/G, copy of letter dated 27.12.2005 as Ex.RW1/H, copy of letter dated 20.1.2006 as Ex. RW1/J (02 pages), copy of letter No.28279-84 as Ex.RW1/K, copy of letter dated 13.9.2012 as Ex.RW1/L, copy of letter dated 17.1.2006 as Ex.RW1/M (02 pages), copy of letter dated 27.12.2005 as Ex.RW1/N, copy of letter dated 3.2.2006 as Ex.RW1/O, copy of muster roll dated 6.3.2006 as Ex.RW1/P, copy of office order dated 26.8.2017 as Ex.RW1/Q, copy of office order dated 10.10.2013 as Ex.RW1/R, copy of letter dated 21.5.2011 as Ex.RW1/S and copy of letter dated 11.9.2007 as Ex.RW1/T.

11. Arguments of the learned counsel/authorized representative for the petitioner and learned District Attorney for the respondents heard and records gone through.

12. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Partly yes

Issue No. 2 : Lump sum compensation of ₹ 25,000/-

Issue No. 3 : Not pressed

Issue No. 4 : Negative

Relief. : Petition is partly allowed awarding lump sum compensation of ₹25,000/- as per the operative part of the award.

### REASONS FOR FINDINGS

*Issues No. 1, 2 and 4 :*

13. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

14. Shri Pawan Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he had been engaged by the respondents on 17.6.1999. Volunteered that, he was engaged on 1.6.1999. He denied that he had not worked since 1.6.1999. He further denied that he had worked intermittently with the respondents from the year 1999 upto 31.7.2000. Further, he denied that no person junior to him had been engaged by the department. He admitted that he had given the demand notice in the month of November, 2015. He specifically denied that he had left the work of his own after July, 2000. Self stated that, he was removed. He clearly admitted that he had not made any representation from the month of August, 2000 upto March, 2015. Volunteered that, he had orally approached the department. He denied that he had not worked for 240 days in any year. He admitted that he does the days' drudgery privately. He also admitted that he owns land, which he cultivates. He denied that S/Sh./Smt. Deep Kumar, Partap Singh, Prem Singh, Vinod Kumar, Manohar Lal, Gyano Devi, Raj Kumar, Asha Devi and Kaushalya Devi were kept at work on compassionate grounds. He also denied that Smt. Geeta Devi and Shri Bhagi Rath were senior to him. He denied that he is giving a phoney statement.

15. Ex.PW1/B is the copy of demand notice dated 9.11.2015 relating to the petitioner.

16. Ex. PW1/C is the copy of seniority list of daily waged workers working under Baldwara Sub-Division.

17. Conversely, Shri Arvind Lakhanpal, Executive Engineer, HPPWD, Division Sarkaghat (respondent No. 2) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondents.

In the cross-examination, he admitted that at the time of appointment no appointment letter was issued to the petitioner. Volunteered that, the muster rolls were issued in his name. He admitted that no service conditions were settled, when the petitioner was engaged. Further, he admitted that no notice or letter had been issued to the petitioner for his absence. He denied that Shri Lekh Raj is junior to the petitioner as per the records. He admitted that the petitioner had worked for more than 240 days preceding twelve calendar months from 31.7.2000. He specifically admitted that HPPWD Sub-Division Baldwara is under HPPWD Division Sarkaghat. He admitted that seniority list of class-IV employees is maintained at Divisional level. He further admitted that the petitioner was a class-IV beldar. Further, he admitted that the persons as shown at serial No. 13 to 17 in Ex.PW1/C are junior to the petitioner. He feigned ignorance whether these persons have been regularized and whether or not they are still serving the department. He clearly admitted that when S/Sh./Smt. Deep Kumar, Partap Singh, Prem Singh, Vinod Kumar, Manohar Lal, Raj Kumar, Gyano Devi, Asha Devi and Kaushalya Devi were engaged on compassionate grounds, no opportunity of re-employment was afforded to the petitioner. It was denied by him that after the year 2000 many fresh hands were engaged. Self stated that they were engaged on compassionate grounds.

18. Ex. RW1/B is the mandays chart relating to the petitioner.

19. Ex. RW1/C is the copy of year wise seniority list pertaining to Sh. Lekh Raj (Beldar).

20. Ex.RW1/D is the copy of year wise seniority list with regard to Shri Narain Singh (Beldar).

21. Ex.RW1/E is the copy of letter dated 29.11.2005 in respect of Shri Prem Singh.
22. Ex.RW1/F is the copy of letter dated 22.2.2006 regarding engagement of Shri Raj Kumar.
23. Ex.RW1/G is the copy of letter No. 8784 regarding employment assistance case of Smt. Neelma Devi w/o late Shri Krishan Chand daily waged beldar on compassionate ground.
24. Ex.RW1/H is the copy of letter dated 27.12.2005 regarding employment assistance case in respect of Sh. Partap Singh s/o late Sh. Marchu Ram, W.C. Beldar.
25. Ex.RW1/J is the copy of letter dated 30.1.2006 regarding employment assistance case in respect of Sh. Manohar Lal s/o Late Sh. Roop Lal Beldar applied for the post of beldar.
26. Ex.RW1/K is the copy of letter No. 28279-84 regarding employment assistance case of Kumari Asha Devi d/o Shri Kashmir Singh, daily waged Beldar on compassionate ground.
27. Ex.RW1/L is the copy of letter dated 13.9.2012 regarding employment assistance case in respect of Sh. Ajeet Singh s/o late Sh. Lachman Dass, daily waged Beldar on compassionate ground.
28. Ex.RW1/M is the copy of letter dated 27.12.2005 regarding employment assistance case in respect of Sh. Vinod Kumar s/o Shri Amar Singh W.C. Beldar applied for the post of clerk on compassionate ground.
29. Ex.RW1/N is the copy of letter dated 27.12.2005 regarding employment assistance case in respect of Sh. Partap Singh s/o late Sh. Marchu Ram, W.C. Beldar, which corresponds to Ex.RW1/H.
30. Ex.RW1/O is the copy of letter dated 3.2.2006 regarding appointment of sons/daughters/near relations of a Govt. servant who dies in harness leaving his family in immediate need of assistance modification thereof.
31. Ex.RW1/P is the copy of the muster roll from 6.3.2006 to 31.3.2006 relating to Smt. Giano Devi.
32. Ex.RW1/Q is the copy of Office Order dated 26.8.2017 pertaining to Smt. Kaushalya Devi.
33. Ex.RW1/R is the copy of Office Order dated 10.10.2013 relating to Shri Deep Kumar.
34. Ex.RW1/S is the copy of letter dated 21.5.2011 regarding policy to regulate the services of part time workers.
35. Ex.RW1/T is the copy of letter dated 11.9.2007 regarding policy to regulate the services of part-time workers.
36. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in HPPWD Division Sarkaghat. The mandays chart Ex.RW1/B produced by the respondents is not in dispute. Its perusal discloses that the services of the

petitioner were initially engaged on 17.6.1999 by respondent No. 2 and that he had worked as such upto 31.7.2000. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that he had orally been terminated by the respondents, whereas the stand taken by the respondents is that after 31.7.2000, the petitioner had left the job of his own.

37. It is well known that the plea of abandonment has to be proved like any other fact by the respondents/employer. The burden of proving of abandonment is upon the respondents. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Arvind Lakhanpal (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. There is nothing on record to show that a notice was served upon the petitioner by either of the respondents calling upon him to resume the duties after he allegedly left the same. Shri Arvind Lakhanpal (RW1) clearly admitted that for remaining absent from duty, no notice or letter was issued to the petitioner. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. Faced with the situation, it was contended by the learned District Attorney for the respondents that it was not required of the respondents to proceed against the workman by way of a domestic inquiry. True it is that the petitioner, a daily wage, was not amenable to the provisions of CCS, (CCA) Rules and as such a domestic inquiry as stipulated therein was not strictly required to be initiated. Nonetheless, absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondents. In the present case as it emerges from the evidence on record, so was not done by the respondents. Then, 'animus' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence, of any such 'animus' on the part of the petitioner, is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondents/employer is not established. So, the claim of the petitioner that his services were orally terminated by the respondents *w.e.f.* 31.7.2000 has to be accepted as correct on the balance of probability.

38. Now the question: Whether in terminating the services of the petitioner, the respondents are proved to have violated the provisions of Section 25-F of the Act. The answer, to my thinking, is in the affirmative in view of the evidence on record.

39. As per the mandays chart Ex.RW1/B, which is an admitted document on the part of the respondents, the petitioner had worked for 182 days from 1st of January, 2000 upto 31st of July, 2000. He is also shown to have worked for 157 days from 17th of June, 1999 upto 31st of December, 1999. Section 25-F of the Act, which is alleged to have been violated by the respondents, reads as under:

*"25-F. Conditions precedent to retrenchment of workman.-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-*

*(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:*

*(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and*

*(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."*



40. In view of this provision, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and that the period of notice has expired or the workman has been paid in lieu of such notice, wages, for the period of notice. The expression "continuous service" has been defined in Section 25-B of the Act. It reads thus:

*"25B. Definition of continuous service. For the purposes of this Chapter,—*

- (i) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (ii) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
    - (ii) two hundred and forty days, in any other case...."*

41. As per the mandays chart Ex.RW1/B, the petitioner is shown to have worked for 314 days preceding twelve calendar months from 31.7.2000. Shri Arvind Lakhanpal (RW1) while under cross-examination was categorical that the petitioner had worked for more than 240 days twelve months prior to 31.7.2000. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months preceding the date of his retrenchment, his services could not have been terminated unless he was served with one month's notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. But, the respondents having undeniably failed to do so, decidedly violated the said provision.

42. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

*"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

43. The petitioner in paragraph 03 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, S/Shri Narain Singh and Lekh Raj, who were junior to him, were retained in service by the respondents. This averment has not been established, as the copy of seniority list Ex.PW1/C of daily waged workers working under Bladwara Sub-Division, nowhere reflects the names of the aforementioned workers. As per this seniority list of daily waged workers relating to Shri Jeet Ram and sixteen others reveals that S/Sh. Jeet Ram, Deep Ram, Mast Ram, Suresh Chand and Mohinder Singh, Baldev and Hem Raj were appointed by the respondents in September, 1993, whereas the services of Shri Arjun Singh were engaged in January, 1993, that of Shri Jai Ram in October, 1993, of Shri Baldev s/o Sh.

Dandu Ram in December, 1993, Shri Dandu Ram in January, 1998 and that of Shri Som Dutt in November, 1997. At the cost of reiteration, I will like to add that the date of initial appointment of the petitioner as per Ex.RW1/B is 17.6.1999. So, all the aforesaid persons were senior to the petitioner. Faced with the situation, it was vociferously argued by the learned counsel for the petitioner that Shri Arvind Lakhanpal (RW1) in his cross-examination admitted that the workers mentioned at serial No.13 to 17 in Ex.PW1/C were junior to the petitioner. True it is that such an admission has been made by respondent No. 2, but the fact of matter is that the services of the petitioner stood disengaged *w.e.f.* 31.7.2000, whereas the five workmen figuring at serial No. 13 to 17 of the seniority list Ex.PW1/C were engaged thereafter *i.e.* from January, 2002 to December, 2006. This only indicates that new/fresh hands had been engaged by the respondents. It was also contended that Shri Narain Singh was junior to the petitioner. This cannot be accepted. Ex.RW1/D is the copy of mandays chart relating to Shri Narain Singh. It reveals that said Shri Narain Singh was engaged by the respondents in June, 1999. The petitioner, as per the admitted case of the parties, was also engaged in June, 1999. Therefore, it cannot be held that the respondents had violated the provisions of Section 25-G of the Act.

44. As per Ex. PW1/C, the seniority list of daily waged workers working under Baldwara Sub-Division, Shri Manohar Lal was appointed by the respondents in January, 2002, whereas the services of Shri Raj Kumar were engaged in March, 2006, those of S/Shri Vinod Kumar and Deep Kumar in December, 2006 and that of Shri Jagar Nath in August, 2007. Admittedly, the date of initial appointment of the petitioner is 1.6.1999. His services, as per the discussion above, were terminated by the respondents on 31.7.2000. There is nothing on record to show that S/Shri Manohar Lal, Raj Kumar, Vinod Kumar, Jagar Nath and Deep Kumar was senior to the petitioner. Rather, it was clearly admitted by Shri Arvind Lakhanpal (RW1) that they were junior to the petitioner. This indicates that fresh/new hands had been engaged by the respondents/department after the termination of the services of the petitioner.

45. Such being the situation, I have no hesitation to conclude that the respondents have contravened the provisions of Sections 25-F and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

46. While testifying in the Court as PW1, the petitioner has given his age as 39 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing days' drudgery privately. It is also admitted by him that he also owns land, which he cultivates. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

47. The learned District Attorney for the respondents contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, wherein it was *inter-alia* held:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

48. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief (s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

49. In case titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondents only for 349 days as a non-skilled worker and had completed more 240 days in a year. His services, as per the reference were disengaged on 31.7.2000 and had raised the industrial dispute by issuance of demand notice after more than **fifteen years** i.e. demand notice was given on 09.11.2015. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

50. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹ 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue No. 4 is answered in the negative and decided against the respondents.

Issue No. 3 :

51. Not pressed.

*Relief :*

52. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondents are hereby directed to pay a compensation of ₹25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondents to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of August, 2019.

Sd/-  
**(YOGESH JASWAL),**  
*Presiding Judge,*  
*Labour Court-cum-Industrial,*  
*Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 55/2013  
Date of Institution : 05.7.2013  
Date of Decision : 26.08.2019

Shri Jeewan Kumar s/o Shri Uddam Singh, c/o Shri R. K. Singh Parmar, Working President, Pb. INTUC, 211-L, Brari, P.O. Partap Nagar, Nangal Dam, District Una, H.P.

*. Petitioner.*

*Versus*

1. The Managing Director, Him Cylinders Limited, Plot No.1 to 4, Industrial Area Amb, District Una, H.P. (Present Address).

2. The Management/Employer, Him Cylinders Limited, D-9, Udyog Nagar, Rohtak Road, New Delhi, 110041 (Corporate Address)

*. Respondents.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. R.K. Singh Parmar, AR.

For the Respondent : Sh. N.L. Kaundal, AR

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Jeewan Kumar s/o Shri Udham Singh, c/o Shri R. K. Singh Parmar, Working President, Pb. INTUC, 211-L, Brari, P.O. Partap Nagar, Nangal Dam, District Una, H.P. *w.e.f.* March, 2012 by the Managing Director, Him Cylinders Limited, Plot No. 1 to 4, Industrial Area Amb, District Una, H.P. (Present Address) and the Management/Employer, Him Cylinders Limited, D-9, Udyog Nagar, Rohtak Road, New Delhi, 110041 (Corporate Address), without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and from which date the above worker is entitled to from the above employer?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that he had been serving the respondent since 12.1.2005 continuously as a helper till the afternoon of 11.3.2012. From 12.3.2012, he was not allowed to enter the gate of the respondent and had been disallowed the work verbally. He had worked for about seven years without any blemish. No inquiry was ever conducted nor he had ever been charge-sheeted. His services had been terminated in hire and fire. No seniority was maintained. Juniors to him were retained in service. No notice was served, nor he had been paid any compensation as provided under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). The act of the management in terminating his services amounts to unfair labour practice. Hence, it was prayed that the petitioner be re-engaged with all consequential benefits.

3. A reply was filed by the respondent taking preliminary objections regarding lack of maintainability and that during the conciliation the matter stood reconciled and a conciliation award had been made and registered accordingly. The contents of the petition were denied on merits. It was asserted that the petitioner had worked as a helper for a very short span of time *i.e.* from 3.5.2007 to 23.9.2007. He thereafter had abandoned the work without assigning any reason and had made a false representation to the Labour Inspector after a lapse of about five years. The petitioner has joined as some other place. It was specifically denied that the services of the petitioner had been terminated by the respondent. The respondent, thus, prays for the dismissal of the claim petition.

4. No rejoinder was filed by the petitioner.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 10.1.2014:

1. Whether the termination of the services of the petitioner by the respondent in the month of March, 2012 is/was illegal and unjustified as alleged? *..OPP.*
2. Whether the claim petition is not maintainable in the present form? *..OPR.*

**Relief**

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Jeewan Kumar examined himself as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of his identity card as Ex.PW1/B and copy of total number of workers on company’s roll as Ex.PW1/C. The respondent

examined one Shri Puran Singh Thakur as RW1. He tendered in evidence his statement by way of affidavit Ex. RW1/A. The petitioner had put to him a copy of seniority list in respect of administrative/clerical staff of the respondent as it stood on 30.6.2018, which he admitted as Ex.PX/A.

7. Arguments of the learned Authorized Representatives for the parties heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2 : No

Relief : Petition is partly allowed as per operative part of the Award.

### REASONS FOR FINDINGS

*Issue No. 1 :*

9. The petitioner, namely, Shri Jeewan Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he denied that he had worked in the company from 3.5.2007 till 23.9.2007 only. He produced on record a copy of his identity card as Ex.PW1/B. He admitted that there was no appointment letter for the year 2001. Volunteered that, it had not been issued by the company. Further, he admitted that during his service, he had not made a demand for the issuance of an appointment letter. He also admitted that he could not produce any record showing that he had worked for 240 days. He specifically denied that no juniors to him had been retained. He placed on record Ex.PW1/C *i.e.* copy of total number of workers on company's roll. He denied that he himself had left the job. He at present is not working anywhere. He possesses two kanals of land, which is in the name of his father. He denied that he is giving a phoney statement.

10. Ex. PW1/B is the copy of identity card of the petitioner.

11. Ex.PW1/C is the copy of total number of workers on company's roll.

12. Ex. PX/A is the copy of seniority list in respect of Administrative/clerical staff as on 30.6.2018.

13. Conversely, Shri Puran Singh Thakur, General Manager of the respondent testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he self stated that he could not produce any notice regarding the absence. He admitted that after the year 2007 the petitioner had not been called for re-engagement. Volunteered that, a letter had been issued, but he had not brought it, nor it is annexed with the Court file. He admitted that seniority list (Ex.PX/A) dated 30.6.2018 has been issued by him, which bears his signatures. He also admitted that there was no complaint against the petitioner during the period of his service. He denied that he is making a phoney statement.

14. It is an admitted case of the parties that the services of the petitioner were engaged as a helper. The petitioner claimed that he had worked with the respondent as a helper *w.e.f.* 12.1.2005 upto 11.3.2012. It was a stand taken by the respondent that the petitioner had worked as a helper for a very short span of time *i.e.* from 3.5.2007 to 23.9.2007. Although, the petitioner (PW1) in his cross-examination denied the fact that he had worked with the respondent from 3.5.2007 upto 23.9.2007, but he himself has proved on record a copy of an identity card issued to him by the respondent as Ex.PW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent on 3.5.2007 for the first time as a helper. The claimant/petitioner has not placed or exhibited on record any document to show that he was appointed by the respondent on 12.1.2005, as claimed.

15. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that his services had orally been terminated by the respondent, whereas the stand taken by the respondent is that since 23.9.2007 the petitioner had remained absent from duty.

16. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Puran Singh Thakur, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Although, he claimed that notice regarding his absence had been issued, but no such notice has seen the light of the day. He was categorical that after the year 2007 the petitioner had never been called for to resume his duties. Though, he self stated that such a letter had been issued, but the same has not been placed and exhibited on record for the reasons best known to him. Then, Shri Puran Singh Thakur (RW1) neither produced any postal receipts, nor any despatch register maintained by the respondent to show that any such notices had been sent and served upon the petitioner. He even did not seek time to produce any such record. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established. So, the claim of the petitioner that his services were orally terminated by the respondent *w.e.f.* March, 2012 has to be accepted as correct on the balance of probability.

17. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my mind, is in the negative in view of the material on record.

18. It was contended by the learned Authorized Representative for the respondent that the petitioner had not worked for 240 days during the preceding twelve months, and therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had continuously worked with effect from 12.1.2005 upto 11.3.2012 and had been completing more than 240 days in each calendar year.

19. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with

reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R. M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

20. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. Although, in his chief-examination the petitioner claimed that he had worked with the respondent as a helper since 12.1.2001 continuously until 11.3.2012, but as already discussed above, it stands proved on record that the petitioner had initially been engaged as a helper by the respondent on 3.5.2007. While under cross-examination, the petitioner was categorical that he has not placed any record to show that he had completed 240 days. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. It has been laid down by the Hon'ble Supreme Court in case titled as **Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

21. Ex. PW1/C, i.e. copy of list of total number of workers on the company's roll reveals that persons mentioned at serial Nos. 146 to 153 working as helpers were appointed by the respondent from 4.5.2007 to 1.4.2009. At the cost of reiteration, I will like to add that the date of initial appointment of the petitioner is 3.5.2007. There is nothing on record to show that the persons mentioned at serial Nos. 146 to 153 of the list were senior to the petitioner. There is not an iota of evidence led on record by the respondent to show that such persons had not been retained in service after the alleged disengagement of the petitioner. This indicates that persons junior to the petitioner were still serving the respondent. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

22. It was also claimed by the petitioner that new appointments had been made by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are not attracted in this case.

23. Such being the situation, I have no hesitation to conclude that the respondent had contravened the provisions of Section 25-G of the Act. The termination of the services of the petitioner is illegal and unjustified.

24. While testifying in the Court as PW1, the petitioner has given his age as 36 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he possesses two kanals of land. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

25. This issue is decided in favour of the petitioner and against the respondent.



*Issue No. 2 :*

26. Keeping in mind my findings on issue No. 1 above, it is held that the petitioner has the cause of action to file and maintain the petition. The petition is very much maintainable in the present form. This issue is decided against the respondent and in favour of the petitioner.

*Relief :*

*Issue No. 3 :*

27. As a sequel to my findings on issues No. 1 and 2 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to continuity and seniority in service from the date of his illegal termination *i.e.* 12.3.2012, except for the back wages. Parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

---

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 439/2015

Date of Institution : 29.10.2015

Date of Decision : 29.08.2019

Shri Sanjiv Vajir s/o Shri Shiv Ram, r/o V.P.O. Chadiyar, Tehsil Baijnath, District Kangra,  
H.P. . . . .Petitioner.

*Versus*

The Executive Engineer, H.P.P.W.D. Division Baijnath, District Kangra, H.P.  
.. . . .Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Jitender Rana, Adv.

For the Respondent : Sh. Sanjeev Kumar Lakha, ADA

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Sanjiv Vajir, s/o Shri Shiv Ram, r/o V.P.O. Chadiyar, Tehsil Baijnath, District Kangra, H.P. during August, 1999 to year, 2011 by the Executive Engineer, H.P.P.W.D. Division Baijnath, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner as set out in the statement of claim is that his services were initially engaged by the respondent as a daily waged beldar on muster roll basis in August, 1999 and he had worked continuously upto April, 2006. Thereafter, he was transferred to Sub Division Junga under Division Winterfield Shimla-1, where he had worked upto February, 2010. From March, 2010 till August, 2011, he had worked in Sub Division Kusumti under Division- II Choura Maidan, Shimla. Since September, 2011 he is working in Division Baijnath at Sub Division, Panchrukhi. He had worked continuously from August, 1999 upto 30th September, 2007. However, he was being issued muster rolls only for 14 to 16 days in a month. His services were being disengaged on 16th day of every month by the respondent. In May, 2006 when he was transferred to Sub Division Junga, he was issued the muster rolls only for the month of May, 2006. No muster-roll was issued thereafter till October, 2006 on the pretext that muster-roll for fifteen days was not issued. However, from November, 2006 onwards muster-rolls for 14 or 15 days in a month were issued. Such practice continued till September, 2007. From March 1, 2010 upto April 22, 2010, he had worked in the H.P. Secretariat in PWD Minister's Branch for 53 days. He was not paid at all for these days, nor any muster roll had been issued. From May, 2011 upto August, 2011 he remained ill and had been advised rest by the doctors. *Vide* office order dated 26.8.2011 he had been asked to report for duty with Assistant Engineer, Baijnath Division. He had joined there on September 1, 2011. He had been asked to keep on reporting in that office till further orders and had reported there till October 20, 2011. No muster roll was issued for this period. Thereafter, *vide* letter dated 20.10.2011 he was adjusted in Sub Division Panchrukhi and had reported there on October 21, 2011. He started working there, but no muster roll was issued for the month of October. Since then he is working there. He had continuously worked for more than sixteen years, except for the fictional breaks given by the respondent. Certain juniors like S/Shri Pink Raj, Anil Kumar, Narain Dass, Harbans Lal, Kundan Lal, Tilak Raj and Vinod Kumar and one Smt. Kalpana Devi had been engaged in the years 1999 to 2007. They all were allowed to continue with the respondent uninterruptedly. More than twenty persons, who had been engaged after him, have been regularized. He despite working for more than sixteen years is still a daily wagger. The provisions of Sections 25-B and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had not been complied with by the respondent. He had worked continuously *w.e.f.* the year 1999 and had completed eight years of service on 31.8.2007 and ten years of service on 31.8.2009. So, as per the policy of the State Government, he is entitled to be regularized as a work-charge beldar *w.e.f.* 1.9.2009. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division, Baijnath has been decided by this Court on 28.11.2011. The act of the respondent to give fictional breaks from time to time *w.e.f.* August, 1999 upto 30.9.2007 is illegal, highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays that the period of fictional breaks given from August, 1999 upto 31.8.2007 be condoned and it be counted towards continuity of service for the purpose of regularization. The respondent be directed to pay him back wages for this period and further that he be granted the work-charge status after completion of eight years *w.e.f.* 31.8.2007 in the pay scale of 4900-10680. He be also paid the arrears *w.e.f.* 1.9.2007

onwards along-with interest @ 12% per annum till realization. The respondent be also directed to place the petitioner in the seniority list of work- charge/regular beldar above his juniors.

3. On notice, the respondent appeared. He filed a reply taking preliminary objection regarding lack of maintainability. The contents of the petition were denied on merits. However, it was admitted that the services of the petitioner were initially engaged on daily waged basis in Jaisinghpur Sub Division *w.e.f.* August, 1999 for 15 days in every month. He had worked as such upto 5.5.2006. Thereafter, he had been shifted to the office of Executive Engineer, Shimla Division No.1 HPPWD Shimla. He had remained under such Division from May, 2006 upto February, 2010. Thereafter, from March, 2010 to August, 2011, he remained under Shimla Division-II (Sub Division Kasumpti). He then was again transferred back to Baijnath Division with the condition that he would lose his seniority of Shimla Division-II and would have fresh seniority in Baijnath Division from the date of his joining there. The petitioner had joined at Punchrukhi Sub-Division on 21.10.2011. He has not completed 240 days in any of the preceding calendar years *i.e.* from the year 1999 upto the year 2006. He had worked continuously only from the year 2008 upto the year 2010. In the year 2011, he had worked for 156½ days. He has not fulfilled the criteria of regularization as per the policy framed by the Government till now. No fictional breaks were given to him. He was engaged as per the availability of work and funds. Only those workers have been regularized by the respondent, who have completed the requisite criteria for regularization as per the Government policy. The respondent had not violated any of the provisions of the Act. The respondent, thus, prays for the dismissal of the claim.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 01.8.2017:

1. Whether time to time termination of the services of the petitioner by the respondent during August, 1999 to year, 2011 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the petition is not maintainable in the present form as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Sanjiv Vajir appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A and copies of prescription/OPD slips and medical certificates as Mark-A to Mark-H. He also examined one Shri Mukesh Kumar, Junior Engineer, HPPWD Division Baijnath, District Kangra, H.P. as PW2, who proved on record copy of seniority list of daily waged workers of Baijnath Division *w.e.f.* 1996 to March, 2008 as Ex.PW2/A. Shri Sanjeev Kumar Sood, Executive Engineer, Baijnath Division HPPWD Baijnath, District Kangra, H.P. (respondent), tendered his statement by way of affidavit Ex. RW1/A, copy of working details of the petitioner as Ex.RW1/B, copy of office order as Ex.RW1/C, copy of letter dated 6.5.2006 as Ex. RW1/D, copy of office order dated 16.5.2011 as Ex.RW1/E, copy of office order dated 21.8.2011 as Ex.RW1/F, copy of joining report of the petitioner as Ex.RW1/G and copy of office order dated 05.3.2018 as Ex.RW1/H.

7. Arguments of the learned counsel for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Partly yes

Issue No. 2 : Partly yes

Issue No. 3 : No

Relief : Petition is partly allowed as per the operative part of the Award.

### REASONS FOR FINDINGS

*Issues No.1 and 2 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Sanjiv Vajir (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that these days he is working in Sub Division Panchrukhi. He also admitted that he was engaged as a daily waged beldar in Sub-Division Jaisinghpur in August, 1999. Further, he admitted that he had worked there upto May, 2006. He specifically denied that from August, 1999 to May, 2006 he had worked intermittently. He had to admit that as and when asked, he was given the work by the department in Sub-Division Jaisinghpur. He also admitted that he had been shifted for work from Sub-Division Jaisinghpur to Shimla Division No.1, where he had worked from May, 2006 upto February, 2010. He specifically denied that he had not worked for 240 days or more in the years 2006 and 2007. He admitted that from March, 2010 till August, 2011, he had worked in Shimla Division No.II. He also admitted that on 16.5.2011 he was transferred from there to Sub Division Baijnath with the condition that he would lose his seniority of Shimla Division No.-II. Volunteered that, the department of its own had transferred him to Baijnath. He admitted that he had joined on 21.10.2011 at Sub Division Panchrukhi. He specifically denied that from May, 2011 upto August, 2011 he remained ill and had never informed the department. He also denied that he intentionally remained absent from duty. He admitted that these days he is continuously working. He denied that he is making a phoney statement.

11. PW2 Shri Mukesh Kumar, Junior Engineer, HPPWD, Division, Baijnath, District Kangra, H.P. has merely proved on record copy of seniority list as Ex. PW2/A.

In the cross-examination, he admitted that entry No.1624/EA2 is there in the despatch register. He also admitted that it is not reflected in Ex.PW2/A as to when the workers were regularized.

12. Mark-A to Mark-H are the copies of prescription/OPD slips and medical certificates relating to the petitioner.

13. Ex. PW2/A is the copy of seniority list of daily waged worker *w.e.f.* 1996 to 3/2008 in respect of Baijnath Division.

14. Conversely, Shri Sanjeev Kumar, Executive Engineer, Baijnath Division HPPWD, Baijnath, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was engaged as a daily wager in August, 1999 in Jaisinghpur Division. He also admitted that the petitioner had regularly worked there from August, 1999 till 5.5.2006. Thereafter stated that he had worked intermittently. Further, he admitted that muster roll for 15-20 days in each month was being issued. It was also admitted by him that the petitioner was transferred on 6.5.2006 to Shimla Division No.-I and had worked in Sub Division Junga upto 28.2.2010. Thereafter, till August, 2011 he had worked in Sub Division, Kasumpti. He also admitted that on 16.5.2011 the petitioner was transferred to Baijnath Division. It was also clearly admitted by him that all the transfers of the petitioner were on administrative grounds. He further admitted that from October, 2007 onwards muster-roll for the full month was issued. He also admitted that Ex.PX has been issued by the department as per which Shri Kuldeep Singh has been regularized on the basis of the policy. He specifically denied that the petitioner remained ill from July, 2011 upto October, 2011.

15. Ex. RW1/B is the copy of the working details pertaining to the petitioner.

16. Ex. RW1/C is the copy of office order dated 20.10.2011 relating to the petitioner.

17. Ex. RW1/D is the copy of letter dated 6.5.2006 issued by the Assistant Engineer, HPPWD Sub Division, Jaisinghpur.

18. Ex. RW1/E is the copy of office order dated 6.5.2011 pertaining to the petitioner.

19. Ex. RW1/F is the copy of office order dated 26.8.2011 issued by the Assistant Engineer, Sub Division No.VIII, HP PWD Shimla.

20. Ex. RW1/G is the copy of joining report of the petitioner.

21. Ex. RW1/H is the copy of office order dated 5.3.2018 pertaining to the petitioner.

22. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in HPPWD Division Baijnath. The mandays chart Ex. RW1/B produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of August, 1999. There is no dispute with regard to the fact that the petitioner had worked as such upto the month of April, 2006 and thereafter he stood transferred from HPPWD Division Baijnath to HPPWD Sub Division Junga under HPPWD Division Winterfield-1 Shimla. RW1 Shri Sanjeev Kumar Sood was categorical in his cross-examination that the petitioner had regularly worked from August, 1999 upto 5.5.2006 and that he stood transferred to Shimla Division No.1 on 6.5.2006, where he had worked in Sub Division Junga upto 28.2.2010.

23. The short and simple case of the petitioner is that the respondent had been providing the fictional breaks to him from time to time and that muster rolls for 14-15 days were being issued to him. Though, as per the reference received from the appropriate Government, time to time termination of the services of the petitioner had been during August, 1999 to the year 2011 but, however, it is the own pleaded case of the petitioner that fictional breaks had been given to him by the respondent from August, 1999 upto 31.8.2007.

24. In this behalf, the petitioner examined himself as PW1 and has deposed in his sworn testimony before this Court that he was engaged by the respondent on muster roll basis, but they were being issued only for a 14-15 days or some times for 16 days in a month. His services were being disengaged on every sixteenth day of the month by the respondent. The said process continued from August, 1999 till 30.8.2007.

25. Conversely, Shri Sanjeev Kumar Sood (respondent) examined himself as RW1. He in his cross-examination was categorical that the muster roll only for 15-20 days in a month was being issued. As per him the petitioner was being engaged as per the availability of work and funds. He further admitted that the petitioner had regularly worked from August, 1999 to 5.5.2006. Thereafter stated that he (petitioner) had been working intermittently. He also clearly admitted that on his transfer to HPPWD Division-1 Shimla, the petitioner had worked in Sub Division Junga till 28.2.2010. In view of the aforesaid admissions made by the respondent and looking to the mandays chart of the petitioner, his assertion that fictional breaks from time to time were being given to him by the respondent appears to be true. No explanation has been put forth by the respondent either in the pleadings or his evidence as to why and under what circumstances muster-rolls were being issued only for 15-20 days to the petitioner. Although, it has been claimed by the respondent and so has also been stated by RW1 Shri Sanjeev Kumar Sood that the petitioner was being engaged on the availability of work and funds, but the respondent has not placed and exhibited on record any document to prove that the services of the petitioner used to be engaged depending upon the availability of work and budget.

26. The seniority list, copy of which has been exhibited and proved on record by the petitioner as Ex.PW2/A through the statement of PW2 Shri Mukesh Kumar posted as Junior Engineer in HPPWD Division Baijnath, reveals that workmen Shri Ghanshyam and Shri Narayan Dass, both were engaged in the year 2001 and since then they were being offered muster rolls for a full month upto the year 2007. Indisputably, both the above named workmen are shown to be employed in HPPWD Division Baijnath. There is no explanation on the part of the respondent as to why the petitioner, who admittedly was senior to the aforementioned workmen, was not granted the muster rolls for the entire month. Be it recorded at the risk of repetition that a plea was taken by the respondent that the petitioner was being engaged as per the availability of work and funds. If that be show, then why the respondent had been providing work for the entire month upto the year 2007 to the aforesaid workmen, who both were also working in the same Division? The reasons to that effect being obscure go to show that the story put forth by the respondent that the work was being provided to the petitioner as per the availability of work and funds is incorrect. It, thus, only goes to show that the respondent had either been resorting to favouritism or had been acting in a partisan manner to one set of workmen or was simply resorting to such process with an oblique motive of depriving the petitioner of the status and privileges of permanent workman, entitling him to regularization as per the policy of the State Government from time to time. It appears to be an act of gross discrimination which is *ex-facie* borne out from the record.

27. The aforesaid act of the respondent in providing artificial/fictional breaks to the petitioner/workman amounts to unfair labour practice as per the Fifth Schedule appended to the Act. The action of the respondent in not intentionally issuing muster roll for the entire month to

the petitioner was not due to any fault of his. The cessation of work was caused due to the arbitrary and discriminatory attitude of the respondent. Thus, it can safely be presumed that the petitioner was in "continuous service". He continued serving the respondent uninterruptedly from the month of his engagement, *i.e.* August, 1999. It can be inferred from the discussion and findings arrived at by me above that the action of the respondent in giving fictional breaks to the petitioner and in the process disengaging him after 14-15-16 days every month till 31.8.2007 was illegal and against the provisions of the Act. Since, it has not been spelt out by the petitioner either in his pleadings or in his evidence that thereafter also till the year 2011 (as per the reference) artificial/fictional breaks were given to him by the respondent, he is not entitled to such relief(s) for this period.

28. It is, therefore, held that the petitioner was in continuous and uninterrupted service with the respondent from the date/month of his engagement. The breaks given by the respondent upto 31.8.2007 were fictional in nature and shall have no effect on the seniority and continuity in service of the petitioner. His seniority shall be reckoned from the date/month of his initial engagement.

29. Issues No. 1 and 2 are accordingly decided partly in favour of the petitioner.

*Issue No. 3 :*

30. No arguments were addressed on this issue, nor it was pressed for by the learned Assistant District Attorney for the respondent. Even otherwise, from the pleadings and evidence on record, no inference of the claim petition being not maintainable could be raised.

31. Issue No. 3 is accordingly decided against the respondent.

*Relief :*

32. As a sequel to my findings on the issues above, the instant claim petition succeeds in part and the same is partly allowed. It is held that artificial/fictional breaks were provided to the petitioner by the respondent from August, 1999 till 31.8.2007 wrongly and illegally. This period of fictional breaks is ordered to be counted for the purpose of continuous service, except back wages. It further goes without saying that the petitioner shall be entitled to regularization from his initial date/month of engagement, though subject to the policy of State Government from time to time. Parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 830/2016

Date of Institution : 24.11.2016

Date of Decision : 30.08.2019

Shri Tilak Raj s/o Shri Chand Ram, r/o VPO Aundh, Tehsil Nurpur, District Kangra, H.P.  
*. Petitioner.*

*Versus*

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P.  
*. Respondents.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Mukul Vaid, Adv. Vice

For the Respondents : Sh. B.C. Katoch, ADA

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the alleged termination of services of Shri Tilak Raj s/o Shri Chand Ram, r/o V.P.O. Aundh, Tehsil Nurpur, District Kangra, H.P. during July, 1990 by (i) the Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after more than 20 years *vide* demand notice dated nil received in the Labour Office Kangra at Dharamshala on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of more than 20 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis during the year 1979 in HPPWD Sub Divisions-I and II, Nurpur and had worked as such upto the year 1990. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para no. 3 of the petition. The mates of the petitioner were S/Shri Nek Ram, Prakash Chand and Jaswant Singh. More than 1000 workers were engaged for a number of years by HPPWD



Division Narpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No. 1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25.5.2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his reengagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections, regarding lack of maintainability and that the petition was bad on the grounds of delay and laches. On merits, it is denied that the services of the petitioner had been engaged as beldar in the year 1979 in HPPWD Division, Narpur. It is also denied that the petitioner was disengaged by the respondents in the year 1990. It is asserted that he was engaged as a daily wager by HPPWD Sub Division Suliali, Division Jassur and had worked intermittently *w.e.f.* April, 1990 upto July, 1990. He had not completed 240 days in every calendar year. The petitioner thereafter had left the work of his own sweet will and had never approached the department. It is claimed that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali vide HP Government Notification no. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It is denied that respondent No. 1 had reengaged workers on 25.5.2010. Infact workers were reengaged by the respondents as per the orders of the Hon'ble High Court. It is admitted that HPPWD Divisions Narpur and Jawali are involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. It is denied that a pick and choose policy had been adopted by the respondents. Neither any junior had been retained nor engaged by the respondents, so there was no violation of the provisions of Sections 25-G and 25-H of the Act. It is denied that the petitioner had made various requests and that assurances had been given to him by the respondents. After leaving the work in July, 1990, the petitioner had never approached the respondents and had raised the demand notice only in the year 2011, *i.e.* after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 7.7.2018:

1. Whether termination of services of the petitioner by the respondents during July, 1990 is/was legal and justified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on the ground of delay and laches as alleged? . . .*OPR.*

## Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Tilak Raj examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Gian Chand (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19.8.1998 as Ex. PW1/B, copy of letter dated 18.12.1999 as Ex. PW1/C, copy of notice dated 4.5.2002 as Ex. PW1/D, copy of resolution dated 18.7.2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18.1.2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23.7.1994 as Ex. RW1/C, copy of office order dated 29.11.2010 as Ex. RW1/D, copy of letter dated 19.8.1998 as Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Lata as Ex. RW1/F, copy of letter dated 18.1.2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Yes
Issue No. 2	: Negative
Issue No. 3	: Yes
Issue No. 4	: Not pressed
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

### REASONS FOR FINDINGS

#### *Issue No.1 and 2 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Tilak Raj (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before the year 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 vide government notification No.PBW-(A)-A(1)17/94. He denied that he had not worked with the respondents. Volunteered that, he had worked regularly from the year 1979 upto the year 1990. He denied that he had not worked from the year 1979 upto March, 1990 and from August, 1990 upto December, 1990. He also denied that he had worked only for 112 days from April, 1990 upto July, 1990. He further denied that no breaks had been given by the department. He also

denied that he was never disengaged by the respondents/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the copy of letter dated 19.8.1998 regarding the posting of Smt. Kusum Sharma as a daily waged Store Clerk.

13. Ex. PW1/C is the copy of letter dated 18.12.1999 to the Chief Executive Engineer, HPPWD, US Club, Shimla by Smt. Kusum Lata.

14. Ex. PW1/D is the copy of letter dated 4.5.2002 regarding notice under Section 80 of CPC to The Secretary, HP Public Works Department, Government of Himachal Pradesh, Shimla.

15. Ex. PW1/E is the copy of letter dated 18.7.2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh.

16. Ex. PW1/F is the copy of letter/UPC dated 18.7.2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh and others.

17. Ex. PW1/G is the copy of postal receipts.

18. Ex. PW1/H is the copy of letter dated 18.1.2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

19. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

20. PW3 Shri Gian Chand stated that he was engaged in the year 1986 as a Mate in HPPWD Division, Nurpur. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondents.

22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2

of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29.11.2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

23. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to shifting of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

24. Ex. RW1/C is the copy of Office Order dated 23.7.1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

25. Ex. RW1/D is the copy of another Office Order dated 29.11.2010 with regard to implementation of the award of this Court dated 22.12.2007.

26. Ex. RW1/E is the copy of letter dated 19.8.1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

27. Ex. RW1/F is the copy of letter dated 18.12.1999 regarding representation of Smt. Kusum Lata.

28. Ex. RW1/G is the copy of letter dated 18.1.2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, HP HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

29. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub-Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondents in the year 1979 and that he had worked as such upto the year 1990. The respondents took the stand that the petitioner had been engaged as a daily waged beldar in HPPWD Sub Division Suliali *w.e.f.* April, 1990 and that he had worked intermittently upto July, 1990. The petitioner denied this case of the respondents. He while under cross-examination categorically denied that he had not worked with the department from the year 1979 upto March, 1990 and from August, 1990 upto December, 1990. However, the respondents have placed and proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. Its perusal discloses that the services of the petitioner were engaged by respondent No. 2 in the month of April, 1990 for the first time as a daily waged beldar and he had worked as such upto July, 1990. The claimant/petitioner has not placed and exhibited on record any document to show that he had regularly worked with the respondents from the year 1979 upto December, 1990.

33. A plea was taken by the respondents that the petitioner had abandoned the work himself. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In **Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand** reported in **[2019 (160) FLR 16]**, it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to

show that a notice was served upon the petitioner by the respondents calling upon him to resume the duties. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. Thus, the plea of abandonment put forth by the respondents/employers is not established.

34. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of 12 calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. As per the mandays chart Ex. RW1/H, the petitioner had only worked for 30 days, 31 days, 29 days and 22 days from April, 1990 upto July, 1990. Thus, in his total service for a period of about four months in between April, 1990 to July, 1990, he had only worked for 112 days. Therefore, the provisions of Sections 25-F and 25-N of the Act are not attracted in this case.

35. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondents. A detail of such persons has been given in para 3 of the statement of claim. Shri Tilak Raj (PW1) also named such persons to be junior to him in his chief-examination, being in the shape of affidavit Ex. PW1/A. The respondents, and in particular respondent No.1, refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the respondents after his alleged termination. Significantly, no seniority list has been placed and exhibited on record or any other witness examined so as to show that the persons named in the statement of claim and in his affidavit by the petitioner were junior to him and who had been retained by the respondents at the time of the termination of his services. The statements of the witnesses examined by the petitioner as Shri Sukar Deen (PW2) and Shri Gian Chand (PW3) are silent in this regard. There is also no whisper in their testimonies that persons junior to the petitioner are still in service. However, they both claimed that their services were engaged by respondent No. 1 in the year 1986, whereas it is apparent from the record that the services of the petitioner as a daily waged beldar for the first time were engaged by respondent No. 2 in the month of April, 1990. So, as per the own testimony of these witness of the petitioner, they both were senior to him. So, the testimonies of the aforesaid witnesses are of no help to the petitioner to establish on record that the principle of 'last come first go' had not been adhered to by the respondents. Then, no prayer had ever been made by the petitioner for the production of the seniority list from the respondents during the pendency of this case.

36. Faced with the situation, by referring to the copy of mandays chart pertaining to Smt. Kusum Lata which has been placed on record by respondent No. 1 as Ex. RW1/J, it was contended by the learned Counsel for the petitioner that she is certainly junior to the petitioner, as she is shown to have been engaged in service in Suliali Sub Division, HPPWD Suliali in February, 2000. This cannot be accepted. Placed on record by respondent No. 1 is another copy of mandays chart pertaining to said Smt. Kusum Lata as Ex. RW1/I. As per this document Smt. Kusum Lata had initially been engaged in the month of November, 1983 in Sub Division No.1 HPPWD, Banikhet and that she had continued to work as such there upto November, 1988. Placed on record is also her representation to the Engineer-in-Chief, HPPWD Shimla, copy of which is Ex. RW1/F. On her representation, it is evident that she stood transferred and posted as a daily waged Store Clerk from 7th Circle HPPWD Dalhousie to 9th Circle HPPWD Nurpur. Reference in this regard can be made to the copy of letter dated 18.1.2000 of Engineer-in-Chief, HPPWD Shimla, Ex. RW1/G. On allotment of one post of Store Clerk in 9th Circle, HPPWD Nurpur, *vide* the aforesaid letter, Smt. Kusum Lata was adjusted as such there, where she has been working regularly from the year 2000 upto January, 2009, as is evident from the copy of her mandays days chart, Ex. RW1/J. So, she can also not be termed as a junior to the petitioner. There is nothing on record to show that the services of said Smt. Kusum Lata had ever been disengaged at any point of time. Rather she appears to have been working with the HPPWD

Division Nurpur. Her joining in the 9th Circle HPPWD Nurpur, on her request in the month of February, 2000 cannot make her a junior to the petitioner, particularly when her year of joining is much prior to that of the petitioner in the HPPWD department *i.e.* she was engaged in the year 1983, whereas the petitioner, as discussed above, had initially been engaged in January, 1990. So, it cannot be said that Smt. Kusum Lata being a junior to the petitioner had been retained in service by the respondents. Therefore, it cannot be said that the respondents had violated the principle of 'last come first go', as envisaged in Section 25-G of the Act.

37. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands have been engaged by the respondents. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

38. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

*Issue No. 3 :*

39. Taking into account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

*Issue No. 4 :*

40. Not pressed.

*Relief:*

41. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

---

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 890/2016

Date of Institution : 24.12.2016

Date of Decision : 30.08.2019

Shri Tulsi Ram s/o Shri Nanku Ram, r/o VPO Kopra, Tehsil Nurpur, District Kangra, H.P.  
*.Petitioner.*

*Versus*

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P.  
*. Respondents.*

### **Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Mukul Vaid, Adv. Vice

For the Respondents : Sh. B.C. Katoch, ADA

### **AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the alleged termination of services of Shri Tulsi Ram s/o Shri Nanku Ram, r/o V.P.O. Kopra, Tehsil Nurpur, District Kangra, H.P. during January, 1987 by (i) the Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after more than 23 years *vide* demand notice dated nil received in the Labour Office Kangra at Dharamshala on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of more than 23 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis during the year 1985 in HPPWD Sub Divisions-I and II, Nurpur and had worked as such upto the year 1990. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para No. 3 of the petition. The mate of the petitioner was Shri Karam Singh. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No. 1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25.5.2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had

communicated in writing for his reengagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retranchment is illegal and arbitrary. The petitioner, thus, prays for his reengagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections, regarding lack of maintainability and that the petition was bad on the grounds of delay and laches. On merits, it is denied that the services of the petitioner had been engaged as beldar in the year 1985 in HPPWD Division, Nurpur. It is also denied that the petitioner was disengaged by the respondents in the year 1990. It is asserted that he was engaged as a daily wagger by HPPWD Sub Division Suliali, Division Jassur and had worked intermittently *w.e.f.* December, 1986 upto January, 1987. He had not completed 240 days in every calendar year. The petitioner thereafter had left the work of his own sweet will and had never approached the department. It is claimed that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* HP Government Notification no. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It is denied that respondent No.1 had reengaged workers on 25.5.2010. Infact workers were reengaged by the respondents as per the orders of the Hon'ble High Court. It is admitted that HPPWD Divisions Nurpur and Jawali are involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. It is denied that a pick and choose policy had been adopted by the respondents. Neither any junior had been retained nor engaged by the respondent, so there was no violation of the provisions of Sections 25-G and 25- H of the Act. It is denied that the petitioner had made various requests and that assurances had been given to him by the respondents. After leaving the work in January, 1987, the petitioner had never approached the respondents and had raised the demand notice only in the year 2011, *i.e.* after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 7.7.2018:

1. Whether termination of services of the petitioner by the respondents during January, 1987 is/was legal and justified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on the ground of delay and laches as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Tulsi Ram examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Gian Chand (PW3) as his witnesses. Besides this the



petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19.8.1998 as Ex. PW1/B, copy of letter dated 18.12.1999 as Ex. PW1/C, copy of notice dated 4.5.2002 as Ex. PW1/D, copy of resolution dated 18.7.2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18.1.2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23.7.1994 as Ex. RW1/C, copy of office order dated 29.11.2010 as Ex. RW1/D, copy of letter dated 19.8.1998 as Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Lata as Ex. RW1/F, copy of letter dated 18.1.2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Yes
Issue No. 2	: Negative
Issue No. 3	: Yes
Issue No. 4	: Not pressed
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

### REASONS FOR FINDINGS

*Issue No. 1 and 2 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Tulsi Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before the year 1994, HPPWD Division was at Jassur. He also admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No.PBW-(A)-A(1)17/94. He denied that he had not worked with the respondents. Volunteered that, he had worked regularly from the year 1985 upto the year 1990. He denied that he had not worked from the year 1985 upto November, 1986 and from February, 1987 upto the year 1990. He also denied that he had worked only for 48 days from December, 1986 upto January, 1987. He further denied that no breaks had been given by the department. He also denied that he was never disengaged by the respondents/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he

admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the copy of letter dated 19.8.1998 regarding the posting of Smt. Kusum Sharma as a daily waged Store Clerk.

13. Ex. PW1/C is the copy of letter dated 18.12.1999 to the Chief Executive Engineer, HPPWD, US Club, Shimla by Smt. Kusum Lata.

14. Ex. PW1/D is the copy of letter dated 4.5.2002 regarding notice under Section 80 of CPC to The Secretary, HP Public Works Department, Government of Himachal Pradesh, Shimla.

15. Ex. PW1/E is the copy of letter dated 18.7.2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh.

16. Ex. PW1/F is the copy of letter/UPC dated 18.7.2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh and others.

17. Ex. PW1/G is the copy of postal receipts.

18. Ex. PW1/H is the copy of letter dated 18.1.2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

20. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

21. PW3 Shri Gian Chand stated that he was engaged in the year 1986 as a Mate in HPPWD Division, Nurpur. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

22. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondents.

23. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had

been kept at work after 29.11.2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

24. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to shifting of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

25. Ex. RW1/C is the copy of Office Order dated 23.7.1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

26. Ex. RW1/D is the copy of another Office Order dated 29.11.2010 with regard to implementation of the award of this Court dated 22.12.2007.

27. Ex. RW1/E is the copy of letter dated 19.8.1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

28. Ex. RW1/F is the copy of letter dated 18.12.1999 regarding representation of Smt. Kusum Lata.

29. Ex. RW1/G is the copy of letter dated 18.1.2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, HP HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

30. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

31. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub Division HPPWD Banikhet.

32. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub Division HPPWD Suliali. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondents in the year 1985 and that he had worked as such upto the year 1990. The respondents took the stand that the petitioner had been engaged as a daily waged beldar in HPPWD Sub Division Suliali w.e.f. December, 1986 and that he had worked intermittently upto January, 1987. The petitioner denied this case of the respondents. He while under cross-examination categorically denied that he had not worked with the department from the year 1985 upto November, 1986 and from February, 1987 upto the year 1990. However, the respondents have placed and proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. Its perusal discloses that the services of the petitioner were engaged by respondent No. 2 in the month of December, 1986, for the first time as a daily waged beldar and he had worked as such upto January, 1987. The claimant/petitioner has not placed and exhibited on record any document to show that he had regularly worked with the respondents from the year 1985 upto the year 1990.

33. A plea was taken by the respondents that the petitioner had abandoned the work himself. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In **Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand** reported in **[2019 (160) FLR 16]**, it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondents calling upon him to resume the duties. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. Thus, the plea of abandonment put forth by the respondents/employers is not established.

34. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of 12 calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. As per the mandays chart Ex. RW1/H, the petitioner had only worked for 21 days in the month of December, 1986 and 27 days in the month of January, 1987. Thus, in his total service for a period of about two months in between December, 1986 to January, 1987 he had only worked for 48 days. Therefore, the provisions of Sections 25-F and 25-N of the Act are not attracted in this case.

35. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondents. A detail of such persons has been given in para 3 of the statement of claim. Shri Tulsi Ram (PW1) also named such persons to be junior to him in his chief-examination, being in the shape of affidavit Ex. PW1/A. The respondents, and in particular respondent No. 1, refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the respondents after his alleged termination. Significantly, no seniority list has been placed and exhibited on record or any other witness examined so as to show that the persons named in the statement of claim and in his affidavit by the petitioner were junior to him and who had been retained by the respondents at the time of the termination of his services. The statements of the witnesses examined by the petitioner as Shri Sukar Deen (PW2) and Shri Gian Chand (PW3) are silent in this regard. There is also no whisper in their testimonies that persons junior to the petitioner are still in service. Both these witnesses claimed that their services were engaged by respondent No. 1 in the year 1986. However, they both have not mentioned the dates and months of their initial engagements in their substantive evidence. It is also not made out from their sworn testimonies that they were junior to the petitioner. It is apparent from the record that the services of the petitioner as a daily waged beldar for the first time were engaged by respondent No. 2 in the month of December, 1986. So, the testimonies of the aforesaid witnesses are of no help to the petitioner to establish on record that the principle of 'last come first go' had not been adhered to by the respondents. Then, no prayer had ever been made by the petitioner for the production of the seniority list from the respondents during the pendency of this case.

36. Faced with the situation, by referring to the copy of mandays chart pertaining to Smt. Kusum Lata which has been placed on record by respondent No. 1 as Ex. RW1/J, it was contended by the learned Counsel for the petitioner that she is certainly junior to the petitioner, as she is shown to have been engaged in service in Suliali Sub Division, HPPWD Suliali in February, 2000. This cannot be accepted. Placed on record by respondent No. 1 is another copy of mandays chart pertaining to said Smt. Kusum Lata as Ex. RW1/I. As per this document Smt. Kusum Lata had initially been engaged in the month of November, 1983 in Sub Division No.1 HPPWD, Banikhet and that she had continued to work as such there upto November, 1988. Placed on record is also her representation to the Engineer-in-Chief, HPPWD Shimla, copy of which is Ex. RW1/F. On her representation, it is evident that she stood transferred and posted as a daily waged Store Clerk from 7th Circle HPPWD Dalhousie to 9th Circle HPPWD Nurpur. Reference in this regard can be made to the copy of letter dated 18.1.2000 of Engineer-in-Chief, HPPWD Shimla, Ex. RW1/G. On allotment of one post of Store Clerk in 9th Circle, HPPWD Nurpur, *vide* the aforesaid letter, Smt. Kusum Lata was adjusted as such there, where she has been working regularly from the year 2000 upto January, 2009, as is evident from the copy of her mandays days chart, Ex. RW1/J. So, she can also not be termed as a junior to the petitioner. There is nothing on record to show that the services of said Smt. Kusum Lata had ever been disengaged at any point of time. Rather she appears to have been working with the HPPWD Division Nurpur. Her joining in the 9th Circle HPPWD Nurpur, on her request in the month of February, 2000 cannot make her junior to the petitioner, particularly when her year of joining is much prior to that of the petitioner in the HPPWD department *i.e.* she was engaged in the year 1983, whereas the petitioner, as discussed above, had initially been engaged in December, 1986.

So, it cannot be said that Smt. Kusum Lata being a junior to the petitioner had been retained in service by the respondents. Therefore, it cannot be said that the respondents had violated the principle of 'last come first go', as envisaged in Section 25-G of the Act.

37. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands have been engaged by the respondents. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

38. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

*Issue No. 3 :*

39. Taking into account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

*Issue No. 4 :*

40. Not pressed.

*Relief :*

41. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

---

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 791/2016

Date of Institution : 19.11.2016

Date of Decision : 05.8.2019

Shri Som Lal s/o Shri Pundu Ram, r/o Village Keyod Garian, P.O. Chowki, Tehsil Nurpur, District Kangra, H.P. . .Petitioner.

*Versus*

1. The Executive Engineer, H.P.P.W.D., Division, Nurpur, District Kangra, H.P.
2. The Executive Engineer, HPPWD Division, Jawali, District Kangra, H.P.

*. Respondents.***Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Mukul Vaid, Adv.

For the Respondents : Sh. S.K. Lakha, A.D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the alleged termination of services of Shri Som Lal s/o Shri Pundu Ram, r/o Village Keyod Garian, P.O. Chowki, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (i) the Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after about 21 years vide demand notice dated nil received in the Labour Office Dharamshala on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis during the year 1987 in HPPWD Sub Divisions-I and II, Nurpur and had worked as such upto the year 1990. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the re-engaged employees as detailed in para No. 3 of the petition. The mates of the petitioner were Shri Harnam Singh, Thuru Ram and Shri Suresh Singh. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were re-engaged on 25.5.2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to

full back wages, as his termination/retranchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections, regarding lack of maintainability and that the petition was bad on the grounds of delay and laches. On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1987 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondents so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondents, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondents. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24.3.2018:

1. Whether termination of services of the petitioner by the respondents during year, 1990 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Assistant District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondents.

7. Arguments of the learned Counsel for the petitioner and the Learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : No

Issue No. 2 : No

---

Issue No. 3	: No
Issue No. 4	: No
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

### REASONS FOR FINDINGS

#### *Issue No.1 and 2 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondents in the year 1990 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis in the year 1987 and had continuously worked as such till the year 1990. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. A plea was also taken by the petitioner that the respondents had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 240 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It was contended by the learned Assistant District Attorney for the respondents that the petitioner had never been engaged by the respondents so the question of completing 240 days did not arise, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

12. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

13. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year 1990. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.



14. The principle of “last come first go” is envisaged under Section 25-G of the Act. The said Section provides:

*“25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.*

15. The petitioner in paragraph 3 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, Shri Rai Singh and twenty three others who were junior to him, were retained in service by the respondents. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondents had violated the provisions of Section 25-G of the Act.

16. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondents. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

17. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

*Issue No. 3 :*

18. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondents at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondents.

*Issue No. 4 :*

19. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondents.

*Relief :*

21. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of August, 2019.

Sd/-  
**(YOGESH JASWAL),**  
*Presiding Judge,*  
*Labour Court-cum-Industrial,*  
*Tribunal, Kangra at Dharamshala, H.P.*

---

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 782/2016

Date of Institution : 19.11.2016

Date of Decision : 05.8.2019

Shri Karnail Singh s/o Shri Baziru Ram, r/o Village and Post Office Haddal, Tehsil Nurpur, District Kangra, H.P. . . *Petitioner.*

*Versus*

1. The Executive Engineer, H.P.P.W.D., Division, Nurpur, District Kangra, H.P.
2. The Executive Engineer, HPPWD Division, Jawali, District Kangra, H.P. . . *Respondents.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Mukul Vaid, Adv. vice

For the Respondents : Sh. S. K. Lakha, A.D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Karnail Singh s/o Shri Baziru Ram, r/o Village and Post Office Haddal, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P., (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil

Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after about 21 years vide demand notice dated-nil-received on 13.06.2011, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis during the year 1986 in HPPWD Sub Divisions-I and II, Nurpur and had worked as such uptil the year 1990. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para No. 3 of the petition. The mates of the petitioner were Shri Kalyan Singh and Shri Charan Dass. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No. 1 had illegally terminated/ retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were re-engaged on 25.5.2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections, regarding lack of maintainability and that the petition was bad on the grounds of delay and laches. On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali vide H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1986 uptil the year 1990. It was asserted that the petitioner had never been engaged by the respondents so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondents, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondents. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, i.e. after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 15.12.2018:

1. Whether termination of the service of petitioner by the respondents during year, 1990 is/was legal and justified as alleged? . . . *OPP*.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . . *OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . . *OPR*.
4. Whether the claim petition is bad on the ground of delay and laches as alleged? . . . *OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Assistant District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondents.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition dismissed *vide* operative portion of the Award.

### REASONS FOR FINDINGS

*Issue No.1 and 2 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondents in the year 1990 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis in the year 1986 and had continuously worked as such till the year 1990. He had completed 240 days in twelve calendar months from the date of his

retrenchment and many juniors were retained. A plea was also taken by the petitioner that the respondents had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 240 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It was contended by the learned Assistant District Attorney for the respondents that the petitioner had never been engaged by the respondents so the question of completing 240 days did not arise, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

12. Section 25-B of the Act defines "continuous service". In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

13. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year 1990. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

14. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

*"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

15. The petitioner in paragraph 3 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, Shri Rai Singh and twenty three others who were junior to him, were retained in service by the respondents. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondents had violated the provisions of Section 25-G of the Act.

16. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondents. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

17. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

*Issue No. 3 :*

18. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondents at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondents.

*Issue No. 4 :*

19. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondents.

*Relief :*

21. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 775/2016

Date of Institution : 19.11.2016

Date of Decision : 05.8.2019

Shri Chowkas Ram s/o Shri Bhagat Ram, r/o VPO Aundh, Tehsil Nurpur, District Kangra,  
H.P. . *Petitioner.*

*Versus*

1. The Executive Engineer, H.P.P.W.D., Division, Nurpur, District Kangra, H.P.
  2. The Executive Engineer, HPPWD Division, Jawali, District Kangra, H.P.
- . *Respondents.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Mukul Vaid, Adv. Vice

For the Respondents : Sh. S.K. Lakha, A.D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the alleged termination of services of Shri Chowkas Ram s/o Shri Bhagat Ram, r/o V.P.O. Aundh, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (i) the Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P., (ii) the Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after about 21 years *vide* demand notice dated nil received in the Labour Office Dharamshala on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis during the year 1985 in HPPWD Sub Divisions-I and II, Nurpur and had worked as such upto the year 1990. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para No. 3 of the petition. The mate of the petitioner was Shri Bakshi Ram. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged

workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent no.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were re-engaged on 25.5.2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections, regarding lack of maintainability and that the petition was bad on the grounds of delay and laches. On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali vide HP Government Notification no. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1985 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondents so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondents, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondents. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, i.e. after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24.3.2018:

1. Whether termination of services of the petitioner by the respondents during year, 1990 is/was illegal and unjustified? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead



his evidence. Since, no evidence was led on record by the petitioner, the learned Assistant District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondents.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition dismissed *vide* operative portion of the Award.

### REASONS FOR FINDINGS

*Issue No.1 and 2 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondents in the year 1990 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis in the year 1985 and had continuously worked as such till the year 1990. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. A plea was also taken by the petitioner that the respondents had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 240 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It was contended by the learned Assistant District Attorney for the respondents that the petitioner had never been engaged by the respondents so the question of completing 240 days did not arise, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

12. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months

prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellattu vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

13. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year 1990. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

14. The principle of "last come first go" is envisaged under Section 25-G of the Act. The said Section provides:

*"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

15. The petitioner in paragraph 3 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, Shri Rai Singh and twenty three others who were junior to him, were retained in service by the respondents. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondents had violated the provisions of Section 25-G of the Act.

16. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondents. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

17. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

*Issue No. 3 :*

18. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondents at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondents.

*Issue No. 4 :*

19. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondents.

*Relief :*

21. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of August, 2019.

Sd/-  
**(YOGESH JASWAL),**  
*Presiding Judge,*  
*Labour Court-cum-Industrial,*  
*Tribunal, Kangra at Dharamshala, H.P.*

---

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.	: 781/2016
Date of Institution	: 19.11.2016
Date of Decision	: 05.8.2019

Shri Karam Chand s/o Shri Rasilo Ram, r/o Village and P.O. Kopra, Tehsil Nurpur, District Kangra, H.P. *. .Petitioner.*

*Versus*

1. The Executive Engineer, HPPWD, Division, Nurpur, District Kangra, H.P.
2. The Executive Engineer, HPPWD Division, Jawali, District Kangra, H.P. *. .Respondents.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Mukul Vaid, Adv. Vice

For the Respondents : Sh. S. K. Lakha, A.D.A.

### AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the alleged termination of services of Shri Karam Chand s/o Shri Rasilo Ram, r/o Village and P.O. Kopra, Tehsil Nurpur District Kangra, H.P. *w.e.f.* 14-06-2011 by (i) The Executive Engineer, Nurpur Division, HPPWD Nurpur, District Kangra (H.P.), (ii) The Executive Engineer, Jawali Division, HPPWD, Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after about 21 years *vide* demand notice dated nil received in the office of Labour Officer Dharamshala on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis *w.e.f.* 26.6.1986 in HPPWD Sub Divisions-I and II, Nurpur and had worked as such upto 25.3.1989. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para No. 3 of the petition. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were re-engaged on 25.5.2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections, regarding lack of maintainability and that the petition was bad on the grounds of delay and laches. On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from 26.6.1986 upto 25.3.1989. It was asserted that the petitioner had never been engaged by the respondents so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and

maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondents, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondents. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 22 years. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24.3.2018:

1. Whether termination of the service of the petitioner by the respondents *w.e.f.* 14-06-2011 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Assistant District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondents.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: No
Issue No. 4	: No
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

## REASONS FOR FINDINGS

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondents *w.e.f.* 25.3.1989 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis on 26.6.1986 and had continuously worked as such upto 25.3.1989. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. A plea was also taken by the petitioner that the respondents had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 240 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It was contended by the learned Assistant District Attorney for the respondents that the petitioner had never been engaged by the respondents so the question of completing 240 days did not arise, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

12. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In *R.M. Yellattv vs. Assistant Executive Engineer, (2006) 1 SCC 106*, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

13. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year 1989. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

14. The principle of "last come first go" is envisaged under Section 25-G of the Act. The said Section provides:

*"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was*

*the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.*

15. The petitioner in paragraph 3 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, Shri Rai Singh and twenty three others who were junior to him, were retained in service by the respondents. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondents had violated the provisions of Section 25-G of the Act.

16. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondents. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

17. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

*Issue No. 3 :*

18. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondents at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondents.

*Issue No. 4 :*

19. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondents.

*Relief :*

21. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the

appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

---

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 784/2016

Date of Institution : 19.11.2016

Date of Decision : 05.8.2019

Shri Pappu Singh alias Pushipinder Singh s/o Shri Jagdev, r/o Village and Post Office Haral, Tehsil Nurpur, District Kangra, H.P. . .Petitioner.

*Versus*

1. The Executive Engineer, H.P.P.W.D., Division, Nurpur, District Kangra, H.P.
2. The Executive Engineer, HPPWD Division, Jawali, District Kangra, H.P. . .Respondents.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Mukul Vaid, Adv. Vice

For the Respondents : Sh. S.K. Lakha, A.D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Pappu Singh alias Pushpinder Singh s/o Shri Jagdev, r/o Village and Post Office Haral, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P., (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after about 21 years *vide* demand notice dated-nil received on 13.06.2011, without complying the provisions of the Industrial Disputes Act, 1947, as



alleged by the workman, is legal and justified? If not, keeping in view of delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis during December, 1986 in HPPWD Sub Divisions-I and II, Nurpur and had worked as such upto the year 1990. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the re-engaged employees as detailed in para No. 3 of the petition. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No. 1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were re-engaged on 25.5.2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections, regarding lack of maintainability and that the petition was bad on the grounds of delay and laches. On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* HP Government Notification no. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from December, 1986 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondents so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondents, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondents. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 15.12.2018:

1. Whether termination of the service of petitioner by the respondents during year, 1990 is/was legal and justified as alleged? . . . *OPP.*

2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . . . *OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . . *OPR*.
4. Whether the claim petition is bad on the ground of delay and laches as alleged? . . . *OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Assistant District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondents.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition dismissed *vide* operative portion of the Award.

### REASONS FOR FINDINGS

*Issue No.1 and 2 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondents in the year 1990 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis December, 1986 and had continuously worked as such till the year 1990. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. A plea was also taken by the petitioner that the respondents had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 240 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It was contended by the learned Assistant District Attorney for the respondents that the petitioner had never been engaged by the respondents so the question of completing 240 days did not arise, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

12. Section 25-B of the Act defines “continuous service”. In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

13. Applying the principles laid down in the above case by the Hon’ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year 1990. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

14. The principle of “last come first go” is envisaged under Section 25-G of the Act. The said Section provides:

*“25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.*

15. The petitioner in paragraph 3 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, Shri Rai Singh and twenty three others who were junior to him, were retained in service by the respondents. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondents had violated the provisions of Section 25-G of the Act.

16. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondents. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

17. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3 :

18. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondents at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondents.

Issue No. 4 :

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondents.

Relief :

21. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)

Ref. No. : 483/2016

Date of Institution : 22.8.2016

Date of Decision : 08.08.2019

Shri Des Raj s/o Shri Dhyan Chand, r/o Village Kawas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

*Versus*

The Executive Engineer, HPPWD Division Killar, Tehsil Pangi, District Chamba, H.P. . *Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Manoj Kumar, ADA

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Des Raj s/o Sh. Dhyan Chand, Village Kawas, P.O. Killar (Pangi), Tehsil Pangi, Distt. Chamba, H.P. during August 2004 by the Executive Engineer, HPPWD Division, Killar District Chamba, H.P. who had worked as beldar on daily wages basis only for 192 days during the years 2003 to 2004 and has raised his industrial dispute *vide* demand notice dated Nil (received in the office of Labour Officer Chamba on 9/6/2015) after more than 11 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the years mentioned as above and delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged beldar on muster-roll basis, without any appointment letter, in the year 1995. He continuously worked with intermittent breaks upto October, 2005 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘first come last go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of his termination, the persons junior to him were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Shri Suraj Ram, Chunku, Budhi Ram, Dev Raj and Bameshwar Dutt. He was not given an opportunity of reemployment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. It was asserted that the petitioner was engaged as a daily waged beldar in the year 2003 and who remained engaged till the year 2004. He had worked intermittently with the department and had left the job of his own sweet will, and had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per the orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of his own, there was no need of serving a notice upon him or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2004, he certainly would have raised an industrial dispute, but the same was raised by him before the Labour Officer only in the year 2015, *i.e.* after about 11 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages. The respondent, thus, prays for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 21.11.2018:

1. Whether termination of the services of the petitioner by the respondent during August, 2004 is/was legal and justified as alleged? *..OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *..OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? *..OPR.*
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? *..OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Assistant District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned authorized representative for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

*Issues No.1 and 2 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in October, 2005 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in the year 1995 and had continuously worked as such till the year 2005. It was also his claim that fictional breaks were given to him by the department so that he could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned Assistant District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In *R.M. Yellatty vs. Assistant Executive Engineer. (2006) 1 SCC 106.* it

has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of August, 2004. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25- F of the Act are not attracted in this case.

15. The principle of "last come first go" is envisaged under Section 25-G of the Act. The said Section provides:

*"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

16. The petitioner in paragraph 10 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, S/Shri Suraj Ram, Chuku Ram, Budhi Ram, Dev Raj and Bameshwar Dutt, who were junior to him, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

*Issue No. 3 :*

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

*Issue No.4 :*

20. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:



*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

*Relief:*

22. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of August, 2019.

Sd/-  
(YOGESH JASWAL),  
Presiding Judge,  
Labour Court-cum-Industrial,  
Tribunal, Kangra at Dharamshala, H.P.

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार, भलेई,  
जिला चम्बा (हि0 प्र0)

श्री केसर राम पुत्र वाहलो राम, निवासी गांव व महाल बग्गी, परगना व उप-तहसील भलेई, जिला चम्बा (हि0 प्र0) प्रार्थी

बनाम

आम जनता

फरीकदोयम।

प्रार्थना—पत्र बाबत नाम दुरुस्ती जेर धारा 37(2) हि0 प्र0 भू-राजस्व अधिनियम, 1954 के अन्तर्गत करने बारे।

प्रार्थी श्री केसर राम पुत्र वाहलो राम, निवासी गांव व महाल बग्गी, परगना व उप-तहसील भलेई, जिला चम्बा (हि0 प्र0) ने निवेदन किया है कि प्रार्थी का नाम ग्राम पंचायत कंगेड के परिवार रजिस्टर रिकार्ड में केसर राम दर्ज है जोकि सही व दुरुस्त है लेकिन राजस्व रिकार्ड महाल बग्गी के भू-इन्द्राज में केसो दर्ज है जोकि गलत दर्ज है। इसलिए महाल बग्गी के भू-राजस्व अभिलेख में आवेदक अपना नाम केसो की बजाये केसर राम दुरुस्त दर्ज करवाना चाहता है।

अतः सर्वसाधारण को इस इशतहार के माध्यम से सूचित किया जाता है कि यदि किसी व्यक्ति को प्रार्थी उक्त का नाम दुरुस्त करने बारा कोई उजर व एतराज हो तो वह दिनांक 07-09-2020 को प्रातः

10.00 बजे असालतन या वकालतन हाजिर होकर अपना उजर व एतराज लिखित रूप में पेश करें अन्यथा प्रार्थी का नाम दुरुस्त करने बारा आदेश पारित कर दिये जायेंगे। इसके उपरान्त कोई भी उजर व एतराज काबिले समायत न होगा।

आज दिनांक 26-08-2020 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—  
सहायक समाहर्ता द्वितीय श्रेणी,  
भलेई, जिला चम्बा (हि0 प्र0)।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार, भलेई,  
जिला चम्बा (हि0 प्र0)

श्री रमेश पुत्र बैहमी, निवासी गांव जनना, महाल सिमणी, परगना व उप-तहसील भलेई, जिला चम्बा (हि0 प्र0) प्रार्थी

बनाम

आम जनता

फरीकदोयम।

प्रार्थना—पत्र बाबत नाम दुरुस्ती जेर धारा 37(2) हि0 प्र0 भू-राजस्व अधिनियम, 1954 के अन्तर्गत करने बारे।

प्रार्थी श्री रमेश पुत्र बैहमी, निवासी गांव जनना, महाल सिमणी, परगना व उप-तहसील भलेई, जिला चम्बा (हि0 प्र0) ने निवेदन किया है कि प्रार्थी का नाम ग्राम पंचायत औहरा के परिवार रजिस्टर के रिकार्ड में रमेश दर्ज दर्ज है जोकि सही व दुरुस्त है लेकिन राजस्व रिकार्ड महाल बनेटू के भू-इन्द्राज में रुमेश दर्ज है जोकि गलत दर्ज है इसलिए महाल बनेटू के भू-राजस्व अभिलेख में आवेदक अपना नाम रुमेश की बजाये रमेश दुरुस्त दर्ज करवाना चाहता है।

अतः सर्वसाधारण को इस इश्तहार के माध्यम से सूचित किया जाता है कि यदि किसी व्यक्ति को प्रार्थी उक्त का नाम दुरुस्त करने बारा कोई उजर व एतराज हो तो वह दिनांक 07-09-2020 को प्रातः 10.00 बजे असालतन या वकालतन हाजिर होकर अपना उजर व एतराज लिखित रूप में पेश करे अन्यथा प्रार्थी का नाम दुरुस्त करने बारा आदेश पारित कर दिये जायेंगे। इसके उपरान्त कोई भी उजर व एतराज काबिले समायत न होगा।

आज दिनांक 26-08-2020 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—  
सहायक समाहर्ता द्वितीय श्रेणी,  
भलेई, जिला चम्बा (हि0 प्र0)।

**ब अदालत सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार, भलेई,  
जिला चम्बा (हि0 प्र0)**

श्री विजय सिंह पुत्र तिलक राज, निवासी गांव व महाल ब्रंगाल, परगना व उप-तहसील भलेई, जिला चम्बा (हि0 प्र0) प्रार्थी

बनाम

आम जनता

फरीकदोयम।

प्रार्थना—पत्र बाबत नाम दुरुस्ती जेर धारा 37(2) हि0 प्र0 भू-राजस्व अधिनियम, 1954 के अन्तर्गत करने बारे।

प्रार्थी श्री विजय सिंह पुत्र तिलक राज, निवासी गांव व महाल ब्रंगाल, परगना व उप-तहसील भलेई, जिला चम्बा (हि0 प्र0) ने निवेदन किया है कि प्रार्थी का नाम ग्राम पंचायत ब्रंगाल के परिवार रजिस्टर रिकार्ड में विजय सिंह दर्ज है जोकि सही व दुरुस्त है लेकिन राजस्व रिकार्ड महाल ब्रंगाल के भू-इन्द्राज में विजय कुमार दर्ज है जोकि गलत दर्ज है। इसलिए महाल ब्रंगाल के भू-राजस्व अभिलेख में आवेदक अपना नाम विजय कुमार की बजाये विजय सिंह दुरुस्त दर्ज करवाना चाहता है।

अतः सर्वसाधारण को इस इश्तहार के माध्यम से सूचित किया जाता है कि यदि किसी व्यक्ति को प्रार्थी उक्त का नाम दुरुस्त करने बारा कोई उजर व एतराज हो तो वह दिनांक 07-09-2020 को प्रातः 10.00 बजे असातन या वकालतन हाजिर होकर अपना उजर व एतराज लिखित रूप में पेश करें अन्यथा प्रार्थी का नाम दुरुस्त करने बारा आदेश पारित कर दिये जायेंगे। इसके उपरान्त कोई भी उजर व एतराज काबिले समायत न होगा।

आज दिनांक 26-08-2020 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—  
सहायक समाहर्ता द्वितीय श्रेणी,  
भलेई, जिला चम्बा (हि0 प्र0)।

**ब अदालत सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार, भलेई,  
जिला चम्बा (हि0 प्र0)**

श्री साहिल कुमार पुत्र प्रवीन कुमार, निवासी गांव व महाल सिमणी, परगना व उप-तहसील भलेई, जिला चम्बा (हि0 प्र0) प्रार्थी

बनाम

आम जनता

फरीकदोयम।

प्रार्थना—पत्र बाबत नाम दुरुस्ती जेर धारा 37(2) हि0 प्र0 भू-राजस्व अधिनियम, 1954 के अन्तर्गत करने बारे।

प्रार्थी श्री साहिल कुमार पुत्र प्रवीन कुमार, निवासी गांव व महाल सिमणी, परगना व उप-तहसील भलेई, जिला चम्बा (हि0 प्र0) ने निवेदन किया है कि प्रार्थी का नाम ग्राम पंचायत सिमणी के परिवार रजिस्टर रिकार्ड में साहिल कुमार दर्ज है जोकि सही व दुरुस्त है लेकिन राजस्व रिकार्ड महाल सिमणी के भू-इन्द्राज में साहिल ठाकुर दर्ज है जोकि गलत दर्ज है। इसलिए महाल सिमणी के भू-राजस्व अभिलेख में आवेदक अपना नाम साहिल ठाकुर की बजाये साहिल कुमार दुरुस्त दर्ज करवाना चाहता है।

अतः सर्वसाधारण को इस इशतहार के माध्यम से सूचित किया जाता है कि यदि किसी व्यक्ति को प्रार्थी उक्त का नाम दुरुस्त करने बारा कोई उजर व एतराज हो तो वह दिनांक 31-09-2020 को प्रातः 10.00 बजे असालतन या वकालतन हाजिर होकर अपना उजर व एतराज लिखित रूप में पेश करें अन्यथा प्रार्थी का नाम दुरुस्त करने बारा आदेश पारित कर दिये जायेंगे। इसके उपरान्त कोई भी उजर व एतराज काबिले समायत न होगा।

आज दिनांक 22-08-2020 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—  
सहायक समाहर्ता द्वितीय श्रेणी,  
भलेई, जिला चम्बा (हि0 प्र0)।

**ब अदालत सहायक समाहर्ता प्रथम वर्ग, डलहौजी, जिला चम्बा (हि0 प्र0)**

श्री लाम्बा राम पुत्र श्री दौलत राम पुत्र श्री मोहन, निवासी गुनियाला, डाकघर व तहसील डलहौजी, जिला चम्बा (हि0 प्र0) प्रार्थी।

बनाम

आम जनता

प्रत्यार्थीगण।

प्रार्थना—पत्र बराए नाम दुरुस्ती बारा इशतहार।

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना—पत्र, ब्यान हल्फी बमय अन्य कागजात इस आशय से गुजारा है कि उसका सही नाम लाम्बा राम है। उसके आधार कार्ड व मेरी परिवार नकल ग्राम पंचायत औसल में सही नाम लाम्बा राम दर्ज है। लेकिन मेरी मलकियती भूमि महाल गुन्याला, पटवार वृत्त भटोली में लखू पुत्र दौलत राम व महाल करेलनू पटवार वृत्त में गब्बर सिंह पुत्र दौलत राम दर्ज है जोकि गलत है। जिसकी दुरुस्ती की जावे।

इस सम्बन्ध में सर्वसाधारण जनता को बजरिया इशतहार द्वारा सूचित किया जाता है कि प्रार्थी के नाम के दुरुस्ती बारे यदि किसी को कोई उजर/एतराज हो तो वह असालतन या वकालतन अधोहस्ताक्षरी की अदालत में दिनांक 18-09-2020 को हाजिर आकर अपना एतराज दर्ज करवा सकता है। हाजिर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जा करके नाम दुरुस्ती के आदेश दे दिए जाएंगे।

आज दिनांक 31-07-2020 को मेरे हस्ताक्षर व मोहर अदालत सहित जारी हुये।

मोहर।

हस्ताक्षरित/—  
(राजेश कुमार जरयाल)  
सहायक समाहर्ता प्रथम श्रेणी  
डलहौजी, जिला चम्बा (हि0 प्र0)।

**ब अदालत सहायक समाहर्ता द्वितीय श्रेणी धरवाला, जिला चम्बा, हि0 प्र0**

महेन्द्र पुत्र भगत पुत्र चमारु, गांव व डाकघर कूर, उप-तहसील धरवाला, जिला चम्बा, हिमाचल प्रदेश। प्रार्थी।

बनाम

आम जनता

प्रत्यार्थी।

विषय.—राजस्व अभिलेख में नाम की दुरुस्ती बारे।

उपरोक्त प्रार्थी महेन्द्र पुत्र भगत पुत्र चमारु, गांव व डाकघर कूर, उप-तहसील धरवाला, जिला चम्बा, हिमाचल प्रदेश ने अधोहस्ताक्षरी के न्यायालय में उपस्थित होकर एक प्रार्थना-पत्र मय ब्यान हल्फी प्रस्तुत करते हुए अनुरोध किया है कि महाल कूर के राजस्व रिकार्ड में मेरा नाम भिन्दर दर्ज है। लेकिन अन्य दस्तावेजों, आधार कार्ड, परिवार रजिस्टर नकल, मेरी लड़की के शिक्षा प्रमाण-पत्र में मेरा नाम महेन्द्र दर्ज है। जिसकी पुष्टि हेतु प्रार्थी ने महाल कूर की नकल जमाबन्दी तथा उपरोक्त अन्य दस्तावेजों की छायाप्रतियां शामिल करते हुए यह भी अनुरोध किया है कि उपरोक्त दोनों नाम प्रार्थी के ही हैं तथा वह उपरोक्त दोनों नामों से सर्वसाधारण जनता में जाना जाता है। प्रार्थी ने चाहा है कि महाल कूर के राजस्व रिकार्ड में भिन्दर सिंह के बजाए महेन्द्र दर्ज किया जावे।

इस सम्बन्ध में सर्वसाधारण जनता को बजरिया इश्तहार सूचित किया जाता है कि भिन्दर के नाम की दुरुस्ती बारे यदि किसी को कोई उजर/एतराज हो तो वह असालतन व वकालतन अदालत अधोहस्ताक्षरी में दिनांक 24-09-2020 को आकर एतराज दर्ज करवा सकता है। हाजिर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जा करके नाम दुरुस्ती के आदेश दे दिये जायेंगे।

आज दिनांक 21-08-2020 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—  
सहायक समाहर्ता द्वितीय श्रेणी,  
धरवाला, जिला चम्बा (हि0 प्र0)।

-----  
**In the Court of Vijay Kumar, HPAS, Sub-Divisional Magistrate-cum-Special Marriage Officer Nadaun, District Hamirpur (H.P.)**

1. Vineet Kumar s/o Sh. Puni Chand, aged 30 years, r/o Village Gharoon, P. O. Dohag, Tehsil Dehra, District Kangra (H.P.).

2. Smt. Pooja d/o Sh. Desh Raj, aged 31 years, r/o Village Bhabran, P.O. Kitpal, Tehsil Nadaun, District Hamirpur (H.P.)  
.. Applicants.

*Versus*

General Public

Subject.— Proclamation for the registration of marriage under section 16 of Special Marriage Act, 1954.

Vineet Kumar s/o Sh. Puni Chand, aged 30 years, r/o Village Gharoon, P. O. Dohag, Tehsil Dehra, District Kangra (H.P.) & Smt. Pooja d/o Sh. Desh Raj, aged 31 years, r/o Village Bhabran,

P.O. Kitpal, Tehsil Nadaun, District Hamirpur (H.P.) have filed an application alongwith affidavits in the court of undersigned under section 16 of Special Marriage Act, 1954 that they have solemnized their marriage on 17-07-2020 at home, r/o Village Bhabran, P.O. Kitpal, Tehsil Nadaun, District Hamirpur (H.P.) and they are living as husband and wife since their marriage may be registered under Special Marriage Act, 1954

Therefore, the General Public is hereby informed through this notice that if any person having who has the objections regarding this can file the objections personally or in writing before this court on or before 21-09-2020 at 10.00 A.M. it will not be entertained and the marriage will be registered accordingly.

Issued on this day 19-09-2020 under my hand and seal of the court.

Seal.

VIJAY KUMAR, HPAS,  
Sub Divisional Magistrate,  
Nadaun, District Hamirpur (H.P.).

**In the Court of Sub-Divisional Magistrate, Hamirpur (H.P.)**

In the matter of :

Babli Devi d/o Sh.Tulsi Ram & w/o Sh. Shankar Singh, r/o Village Mouhan, P.O. Jhaniara, Tehsil & Distt. Hamirpur (H.P.) . . Applicant.

*Versus*

General Public

. . Respondent.

Subject.—Proclamation regarding correctness of name of applicant.

Whereas Babli Devi d/o Sh.Tulsi Ram & w/o Sh. Shankar Singh, r/o Village Mouhan, P.O. Jhaniara, Tehsil & Distt. Hamirpur (H.P.) alongwith copies of Adhar Card, Pan Card and copy of affidavit pertaining to correctness of her name as BABLI DEVI which has wrongly been entered as "BIMLA DEVI" in the service record of her Late husband inadvertently.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding correctness of the applicant as " BABLI DEVI" instead of "BIMLA DEVI" can file the objection personally or in writing before this court of undersigned on or before 26-09-2020.

The objection received after will not be entertained and order will be issued for correctness of name of the applicant accordingly.

Issued today on 26-08-2020 under my hand and seal of the court.

Seal.

Sd/-  
Sub-Divisional Magistrate,  
Hamirpur, Distt. Hamirpur (H.P.).

**In the Court of Sub-Divisional Magistrate, Hamirpur (H.P.)**

In the matter of :

Rajinder Kumar s/o Sh. Lobhi Ram, r/o Village Naili Bagwar, P.O. Mundkhar, Tehsil Bhoranj, Distt. Hamirpur (H.P.) presently residing in House No. 421, Ward No. 1, Anu, Hamirpur, Tehsil & Distt. Hamirpur (H.P.) . . Applicant.

*Versus*

General Public

. . Respondent.

Subject.—Proclamation regarding correctness of father name of applicant.

Whereas Rajinder Kumar s/o Sh. Lobhi Ram, r/o Village Naili Bagwar, P.O. Mundkhar, Tehsil Bhoranj, Distt. Hamirpur (H.P.) presently residing in House No. 421, Ward No. 1, Anu, Hamirpur, Tehsil & Distt. Hamirpur (H.P.) alongwith copies of Adhar Card, Army record, Pan Card pertaining to correctness of his father name, which has wrongly been entered as "Lab Singh" in the PAN CARD inadvertently for proclamation of his.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding proclamation of correctness of his father name in official Gazette *i.e.* LOBHI RAM in place of LAB SINGH can file the objection personally or in writing before this court of undersigned on or before 26-09-2020.

The objection received after will not be entertained and order will be issued for correctness of name of the applicant accordingly.

Issued today on 25-08-2020 under my hand and seal of the court.

Seal.

Sd/-

*Sub-Divisional Magistrate,  
Hamirpur, Distt. Hamirpur (H.P.).*

---

**HIMACHAL PRADESH VIDHAN SABHA SECRETARIAT, SHIMLA-4**

**NOTIFICATION**

*Shimla-4, the 05th September, 2020*

**No. VS/Estt./RTI/6-04/2006-V.**—In supersession to all previous Notifications/Orders issued in this regard and in exercise of the power conferred in terms of sub-section (1) of Section 5 of the Right to Information Act, 2005, Miss Mitali, Law Officer, is hereby designated as Public Information Officer in place of Mrs. Neelam Lohia, Deputy Secretary in this Secretariat for the implementation of Right to information Act, 2005 with immediate effect.

Sd/-

Secretary,  
H.P. Vidhan Sabha.

**INFORMATION & PUBLIC RELATIONS DEPARTMENT****NOTIFICATION***Shimla-2, the 2nd September, 2020*

**No. Pub-B(6)-2/2017-I.**—The Governor, Himachal Pradesh is pleased to order the transfer and posting of the following District Public Relations Officers/Information Officers of Information & Public Relations Department in condonation of short stay of both, without TTA & JT, :—

Sl. No.	Name of the Officer S/Sh.	Present Place of Posting	New Place of Posting
1.	Prem Lal	District Kullu	District Bilaspur
2.	Krishan Pal	District Bilaspur	District Kullu

The above Officers are directed to join their duties on the new place of posting immediately and send their joining reports to this department through proper channel.

By order,

**JAGDISH CHANDER SHARMA,**  
*Principal Secretary (I&PR).*

**GENERAL ADMINISTRATION DEPARTMENT**  
**(CONFIDENTIAL & CABINET)**

**NOTIFICATION***Shimla-171002, the 07th September, 2020*

**No. GAD-C(CC)1(A)1/2017-L.**—In pursuance of the provision of Rule 6 (1) of the Rules of Business of the Government of Himachal Pradesh, the Governor, Himachal Pradesh on the recommendation of the Chief Minister has been pleased to allocate the portfolio of Medical Education Department to Dr. Rajiv Saizal, Health & Family Welfare Minister, Himachal Pradesh, in addition to the portfolios already allocated to him, in the public interest with immediate effect.

By order,

Sd/-

*Chief Secretary.*